S. Bijapur 4/51

1951. **File No.**

K

Examined

Legal **DEPARTMENT**

E **BRANCH**

Subject:— Suits. Bijapur.

In the Court of the Civil Judge (S.D.), Bijapur.

Civil Suit No. 198 of 1950.

Laxman Raojirao Zingade — Pltf.

Vs.

The State of Bombay — Deft.

Civil Suit No. 199 of 1950.

Venkatesh Raojirao Zingade — Pltf.

Vs.

The State of Bombay — Deft.

P-99

(F)

File No. S. Bijapur 4/51.

Std. Scott. Slip 24-B

CONTENTS.

Legal Department File No. S.Bij. 4/51

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Bijapur.	
		C.S. No. 198 of 1950.	
		L. R. Zingade	
		V/s	
		The state of B'bay.	
		C.S. No. 199 of 1950.	
		V. R. Zingade	
		V/s	
		The state of B'bay	
		For a declaration that an order was illegal, void and ultra vires, and for an injunction.	
			1—164

Letter.

To

The Remembrancer of Legal Affairs,
Bombay.

No.ABN/5963. Poona, the 25th Septr.1950.

Subject:-Civil Suits No.198 and 199 of 1950.
filed by Shri.L.R.Zingade and V.R.Zingade

Reference your letter No.12500 dated 31-8-1950 on the subject noted above.

The information as required under Rule 118 of the law officers' Rules has already been called for from the Assistant Registrar, Cooperative Societies, Bijapur and his report is awaited.

Joint Registrar, Cooperative Societies,
Bombay State, Poona.

KS

M.20.9.

17758
A-27-9-50

17758
27-9-50.

Submitted for information.

Await pps.

27/9

27/9

Letter .

3 + 3 /

To,

The Remembrancer of Legal Affairs,

B o m b a y.

No.ABN/5963. Poona , the 2nd Nov. ~~October~~, 1950.

Subject: Civil Suits No.198 & 199 of 1950, filed by Shri.L.R.Zingade and V.R.Zingade ....

Reference your letter No.14656 dated the 19.10.1950 on the subject noted above.

2. I am awaiting a report from the Assistant Registrar, Cooperative Societies, Bijapur, who has been expedited in the matter. On receipt of his report, I shall submit my report immediately .

Joint Registrar, Cooperative Societies, Bombay State, P o o n a .

nvb/30

20298
A-7-11-50

.....

20298

7-11-50

Submitted for information

~~Annual~~ Report

~~[illegible]~~

7.11.

A Gobs

for

7-11.

S 45 1/5

No.D.A.W.-199
Bijapur, 14-11-1950.

Letter.

To

The Remembrancer of Legal Affairs,
BOMBAY.

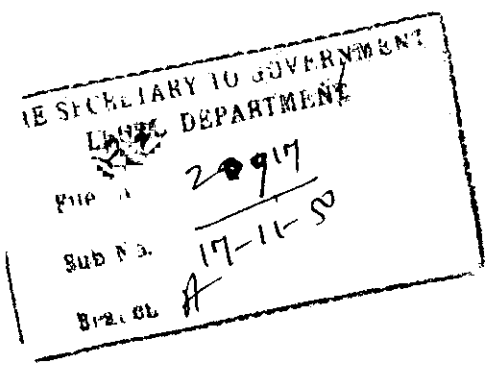
Sub :- Civil Suit Nos. 198 & 199 of 1950.
Report under Rule 118 of the Law Officers Rules.

Ref :- Your letter No.15643, dated 8-11-1950.

I have the honour to invite your attention to this office letter of even No. dated 28-8-1950 and to state that neither the notices under Section 80 C.P.C. nor summons from the Civil Court have been served on the Collector. The Registrar of Co-Opp. Societies is the head of the Co-Operative Dept and the papers might be pending in his office. The report under Rule 118 may therefore be called for from him.

For Collector, Bijapur.

× This was a circular letter issued to Collrs. by L.D.



20917
17-1450

Submtd. for information.

In view of the letter from the Jt. Registrar at p. 11 ante, his report may be awaited.

17-11

A Sols.

17-11

L. D.
17 NOV 1950

7 15 47

No.L.A.W.-199
Bijapur, 14-11-1950.

Letter.

To

The Remembrancer of Legal Affairs,
BOMBAY.

Sub :- Civil Suit No.198 &199 of 1950
Report under Rule 118 of Law Officers Rules.

Ref:- Your Letter No.15643, dated 8-11-1950.

I have the honour to invite your attention to this office letter of even No. dated 28-8-1950 and to state that neither the notices under Section 80 C.P.C. nor summons from the Civil Court have been served on the Collector. The Registrar of Co-Opp. Societies is the head of the Co-Opperative Dept., and the papers might be pending in this office. The report under Rule 118 may therefore be called for from him.

Sd/- A.S.A.Nawab,
For Collector, Bijapur.

Copy forwarded with compliments to the Dist. Govt. Pleader, Bijapur for information.

THE S[illegible]Y TO GOVERNMENT
L[illegible]L DEPARTMENT
No. 21008
Dated 18-11-50
A

15/11
For Collector, Bijapur.

2100 8
18-11-30

Submitted for information.

In view of the letter from the Jt. Registrar at p. 11 ante, his report may be awaited.

18-11

A Sols Issue reminder to Reg. J Cop. Soc.

lw
18-11

No.16229

Legal Department,
Bombay Castle(Bombay No.1), November 1950.

To
The Registrar,
Co-operative Societies, Poona.

Subject:- Bijapur Civil Suit
Nos. 198 and 199 of 1950.

I have the honour to invite your attention to this office letter No. 12500, dated the 31st August 1950 and subsequent reminder No. 14656 dated 19th October 1950 on the above subject and to request you to forward your report under rule 118 of the Law Officers Rules for defence of these suits very urgently.

For Remembrancer of Legal Affairs.

P.H.R.
20/11

Submitted for Signature.

20-11

Issued
20/11

11 - 21

Letter.

To:

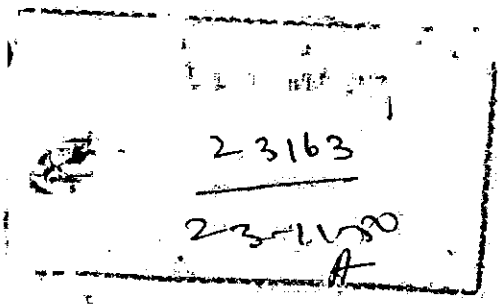
The Remembrancer of Legal Affairs,
Legal Department,
Bombay No. 1.

No. ABN/5963. Poona, the 21st November, '50.

Subject: Bijapur Civil Suit Nos. 198 and 199 of 1950.

Reference Government Letter No. 16229, dated the 20th November, 1950.

I regret, I have not yet been able to get the required information from the Assistant Registrar, C.S., Bijapur inspite of numerous reminders. I have again expedited him.



for Registrar, Cooperative Societies,
Bombay State, Poona.

Submitted for information.

Await report

13 23

(Below letter No.ABN/5963 of 1950 dated 27th December 1950 from the Registrar of Cooperative Societies and its accompaniments together with a copy of the note recorded in the Development Department)

No.CSM/7250-D,
Development Department,
Mercantile Bank Building,
Mahatma Gandhi Road,
Bombay No.1, 9th January 1951.

654
11-1-51

Forwarded to the Remembrancer Legal Affairs in accordance with Rule 119 of the Law Officers Rules with a request to sanction the defence of the suit.

By order of the Governor of Bombay,

Assistant Secretary to the Government of Bombay,
Development Department.

Copy to:-

The Registrar of Cooperative Societies.

RPR.
9/1/51.

Letter.

15 27

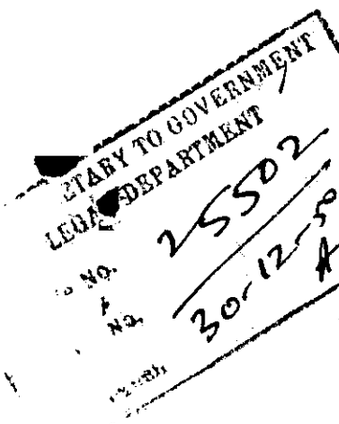
To

The Secretary to Government,
Development Department, Bombay.

No. ABN/5963 of 1950. Poona, the 27th December 1950.

Subject:- Civil Suits No. 198 and 199 of 1950, filed by Shri L. R. Zingade and V.R. Zingade against the Registrar, Coop: Societies, Bombay State, Poona.

The summonses dated 22-11-1950, from the Civil Judge, S.D., Bijapur were received in respect of Civil Suits Nos. 198 and 199 of 1950 filed by Shri L. R. Zingade and V. R. Zingade respectively. The services of these summonses were accepted by me and the District Government Pleader, Bijapur was requested to appear on my behalf and obtain a long adjournment in respect of the said Civil Suits filed against me and the Wilson Anti-Famine Institute Bijapur.



Regd. Post

2. The facts of the case in brief are as under :-

Shri R. R. Zingade, the brother of the plaintiffs, Shri L. R. Zingade and V. R. Zingade was working as a clerk in the Wilson Anti Famine Institute, During the course of audit the Auditor, Coop: Societies, Bijapur found that Shri R. R. Zingade had misappropriated a large amount out of funds of the Institute. In order to recover the misappropriated amount, the Institute referred the case to arbitration under Section 54 of the Bombay Cooperative Societies Act, 1925 and the Assistant Registrar, Coopve. -Societies, Bijapur, appointed the District Cooperative Officer, Bijapur as Registrar's nominee to decide the case He attached the properties of Shri L. R. Zingade and Shri V. R. Zingade who are the brothers of Shri R.R.Zingade, the Ex-servant of the Wilson Anti-Famine Institute, under the Section 55 of the Bombay Coop: Societies Act on the information, supplied to him by the Institute which has referred to the case to arbitration.

3. It is reported that Shri R.R.Zingade is the Manager of the Joint Family and that he has a share in the houses standing in the name of Shri V.R.Zingade, the plaintiff in Suit No. 199, It is also suspected that the properties standing in the name of Shri L.R.Zingade plaintiff in Suit No. 198, have been purchased out of the amount misappropriated by Shri R.R.Zingade. On 29th July 1949 and 29th July 1949, Shri L. R.Zingade and V.R. Zingade approached this office complaining against the ~~orders passed under Section~~ attachment order of the Arbitrator. As the appeals against the orders passed under Section 55 of the Bombay Coop: Societies Act are to be made to the Bombay Cooperative Tribunal, the plaintiffs were informed under this office letter No. ABN/5963, dated the 22nd August 1949 to approach the Bombay Coop: Tribunal in the matter. In the present arbitration dispute filed by the AntiFamine Institute, the District Coop: Officer has been appointed by the Assistant Registrar as Registrar's nominee under Section 54 of the Bombay Coop: Societies Act, to decide the dispute. The District Coop: Officer has apparently passed the orders of attachment of the certain properties, in which the defendant R.R.Zingade has some interest and share or which were acquired from out of the money misappropriated by him. The Dist. Coop: Officer has issued the attachment order on the information supplied by the Institute. The Registrar is not interested but and will not contest it. If the applicants are able to prove that the properties are not liable for the claims made by the Society the District Cooperative Officer will raise the attachment order.

p.t.o.

A copy of the Assistant Registrar's report giving all facts of the case is enclosed.

I enclose herewith information as required under Rule 118 of the Law Officers' Rules and would request that Government may be moved to take early steps to sanction the defence of the suits.

Sd. P. J. Chinmulgund,

Registrar, Cooperative Societies,
Bombay State, Poona.

N.W.23.12.

Copy tother with copies of accompaniments forwarded with compliments to the Secretary to Legal Department, Bombay.

Registrar, Cooperative Societies, B.S.,
Poona.

Sattd.

This appears to be an advance copy of the report. The main report is forwarded to the Govt dept.

The report from the D. D. may be awaited for a fortnight.

30.12

ASOM.

30-12

Letter.

17

The Registrar, Cooperative Societies and
Director of Agricultural Marketing and
Rural Finance, B.S., Poona.

Subject:-Civil suit No.198 and 199 filed by
Shri.L.R.Zingade and V.R.Zingade.

No.ABN. of 1950. Camp Bagalkot, 25th Nov.1950.

Please refer to your No.ABN/5963 dated 24th July 1950 on the above subject.

I am furnishing herewith the necessary information as required under Rule 118 of the Law Officers' Rules.

1. The No.of the Suit.

There are two suits in this case. The one is by Shri.L.R.Zingade and the other is by Shri.V.R.Zingade. The respective suit Nos. are 198 and 199.

2. The date on which, and the court in which, it was instituted.

The cases have been instituted by the parties - mentioned above on 10-3-1950 in the court of Civil Judge, Senior Division, Bijapur.

3. The names of all the parties.

Plaintiffs.
1. Shri.V.R.Zingade.
2. Shri.L.R.Zingade.

Defendants.
1. The Registrar of Coop.Societies, Poona.
2. The Wilson Anti-Famine Institute, Bijapur.

4. The amount or value of the claim.

The suit has been instituted to release the - properties attached under section 55 of the Bombay Coopve. Societies Act, 1925 by the District Cooperative Officer, Bijapur and the Arbitrator.

5. The date fixed by the court for the first time.

The date was fixed on 12-6-1950 by the Civil Court, Junior Division, Bijapur. Now the case is transferred to the Civil Court, Senior Division, Bijapur. No summons are - received in this office fixing the date of hearing. They might have been received in the Registrar's office.

6. Whether notice of action has been given under section 80 of the Civil Procedure Code and if so date of delivery of such notice.

It is said by the plaintiffs that notices were given under section 80 of Civil procedure Code. But no such notices are received in this office. They might have been received in the Registrar's office.

II (a) A copy of the plaint in the regional language, together with copies of any documents or list of documents annexed to the plaint.

The plaints are in English. It does not seem ne to send the plaints in regional language.

(b) A translation of the same in English t

19 61 2

(b) typed in half margin the more important of the statements therein being distinctly marked with letters (a),(b) etc.and notes being added in the margin stating whether such statements are correct or not,and if not, in what respect they are incorrect,(when the requisite explanation cannot be thus compressed reference should be made to the paragraph of the accompanying statement in which,the matter should be fully discussed.

The copies of plaints in English are enclosed herewith. The remarks on each of the para in the plaints are given below:-

Para 1,2 and 3. When the Institute came to know that the amount has been misappropriated by the clerk Shri. R.R.Zingade now suspended,the brother of the plaintiffs, it referred the case to arbitration. The District Cooperative Officer,Bijapur was appointed as the Arbitrator. The Arbitrator attached the properties mentioned in the plaint under section 55 of the B.C.S.Act,1925. The order along with the list of property was served by the Arbitrator on 11-3-1949. The plaintiffs' contention that the orders have been passed behidd their back is not correct as Shri.R.R. Zingade is the manager of the joint family. He being the office-bearer of defendant No.2 the claims have been preferred through him. The land bearing R.S.No.333-A/2, 7½ gunthas situated at Mahal Bagayat Bijapur has been purchased for Rs.4000/- benami in the name of L.R.Zingade on 28-10-48 immediately after suspension of R.R.Zingade. Shri.R.R.Zingade misappropriated the amount on various occassions since 1947. He being the principal member of the family might have financed the shop run in the name of L.R.Zingade out of this misappropriated amount. As regards the house property at Bagalkot standing in the name of V.R.Zingade it has been transferred to him as manager after the death of his father. In this property Shri. R.R.Zingade has got his share. At least to the extent of share there is liability on the property extracts are enclosed herewith. Hence the attachment made by the District Cooperative Officer and Arbitrator is legal.

Para 4. The attachment order issued by the District Cooperative Officer is legal as he is appointed as the nominee of Defendant No.2 under section 54,and the plaintiffs are mostly acquired out of the funds misappropriated.

Para 6. The copies of notices said to have been served under section 70 of the Bombay Cooperative Societies Act,1925 and under section 80 of civil procedure code 1908 are not available in this office. They might be in the Registrar's office.

Para 7. The reply is said to have been given by the defendant No.1,refusing the request of the plaintiffs is not available in this office.

Para 11. The defendant desires to state that the suit properties appear to have been acquired by Shri.R.R. Zingade in the name of the plaintiffs,out of the sum misappropriated from defendant No.2 institution. They might have been kept in the name of the plaintiffss with a view to hide the various misappropriations committed and to defraud the defendant No.2.

(C) A full and detailed statement (1) of the circumstances which led to the suit.

Shri.R.R.Zingade,the brother of the plaintiffs was employed as Clerk in the Wilson Anti-famine Institute in June 1945. In the course of time he misappropriated the funds of the Institute. This fact was brought to light [redacted] the accounts were audited

21 32

Then he was suspended from 1-10-1948,and the case was referred to arbitration for the recovery of sum misappropriated and also criminal proceedings were started against him,by passing a resolution(copy enclosed) is going on in the court of the Resident Magistrate I class,Bijapur . The arbitrator attached the suit properties for which the plaintiffs have filed suits alleging that the properties attached are in their name,and that the defendant No.1 has refused to give a reply to their notices and also they have no connection whatsoever with the Institute. As Shri.R.R.Zingade is the manager of the joint family and as he has got a share in the property and as some of the properties are suspected to have been purchased out of the amount misappropriated,these properties have been attached claiming through an employee of the Institute.

(2) of the course which it is proposed to adopt namely whether to admit,compromise or defend the suit and of the reasons for the same.

Since the compromise is not possible as the defendant No.2 has lost heavy funds and as the plaintiffs including Shri.R.R.Zingade are not willing to make good the amount misappropriated the case has to be defended.

Reasons for the defence are:-

1. Shri.R.R.Zingade the brother of the plaintiff is the manager of the joint Hindu Family.

2. Shri.R.R.Zingade has purchased the properties mentioned in the suit,in the name of the plaintiff to hide his various misappropriations committed by him and also to defraud the defendant No.2.

3. Shri.R.R.Zingade has got share in the ancestral property standing in the name of the plaintiffs.

(Accompaniments in 7 sheets)

Through the Deputy Registrar,
C.,S.,S.R.Belgaum.(w.cs.)

Sd/- C.R.Hiremath,
Assistant Registrar,
Cooperative Societies,Bijapur.

* Advance copy forwarded with compliments to the Registrar,Cooperative Societies,B.,S.,Poona.

C.R.Hiremath.
Assistant Registrar,
Cooperative Societies,Bijapur.

23 354

Below copy of Resolution No.1 passed in the meeting of the Board of Directors Wilson Anti Famine Institute Bijapur, held on 27th February 1949, at 5-30 P.M. in Collector's Bunglow Bijapur.

- -

Subject :- 1. To consider the report of the Auditor, regarding the defalcations in the accounts of the I Institute.

Resolution. It is resolved that as the clerk of the Institute Mr. Kingade appears to have defalcated huge amounts as reported by the Auditor, and the question should be referred to arbitration, under the Cooperative Societies Act, further it resolves that immediated legal steps be taken against him.

.....

No. 69 of 1950.
Office of the
Wilson Anti Famine Institute
Bijapur: 3-3-1949.

25/15
37

To,

The Assistant Registrar,
Cooperative Societies, Sholapur.

Subject:- Arbitration proceedings,
against Mr. R. R. Zingade.

Sir,

I have the honour to state that in the Board Meeting held on 27th February 1949, it was resolved to take arbitration proceedings against Mr. R. R. Zingade for the recovery of the amounts misappropriated by Mr. R. R. Zingade, as reported by the Auditor C.S., Bijapur

Accordingly I am sending herewith the case papers with a request to take immediate action for deciding the case.

In the meanwhile the Registrar's Nominee for this case may please be asked to pass interim attachment order under section 55 of the Cooperative Societies Act, Necessary information regarding properties required in this respect, will be supplied to the Arbitrator.

Sd. S.T.Patil

Honorary Secretary.
W.A.F.I. Bijapur.

Enclosures:-

1. Statement of claims.
2. Proceedings of the Board Meeting held on 27-12-1949.

Through the Auditor C.S., Bijapur.

ENGLISH VERSION

Property Extract

Village S.No.6
Taluka Bijapur.

Village:-Mahal Bagayat

S.No. of Entry	Particulars of Entry.
3036	28 December 1948 purchased from Subedar Sayad Jilani wallad Abasab Jahagirdar and his relatives area 0-7½ gunthas for Rs. 4000/- on 28-10-48 by Laxmanrao Ravajirao Zingade.

Particulars of registration

S.No.	Area	Assessment	Name
333-A/2A	0-7½ Gts	0-2-6	Laxmanrao Ravajirao Zingade.
333-A/2 B	0-½ Gts	0-0-4	Subedar Jilanisab Abasab Jahagirdar.

1

Sd/-

TRUE COPY

Date 22-2-49.

Assistant Registrar,
Cooperative Societies, Bijapur.

Village S.No.7

ENGLISH VERSION

333-A Division 2-A

Village Mahal Bagayat
Taluka Bijapur.

	A. G.	
Area	0 - 7½	Holder Laxmanrao Ravajirao Zingade
		3036
Total	0 - 7½	
Assessment	0-2-6	
Water pact		

Prepared on 22-2-1949

Sd/-

TRUE COPY

Sd/- C.R.Hiremath.
Assistant Registrar,
Cooperative Societies, Bijapur.

ENGLISH VERSION

7

29/41

P.R.Card Extract.

City Bagalkot Ward No. III

C.T.S.No.	Area	Tanure
441	210	A

19-1-40	Holder - Ravaji Subbanji legal heir sons application dated 1-10-39 Entry made as in the case of City S.No.440/III as per D.C.Os intimation.	(H) Venkatesh Ravaji Zingade A/K Manager (E) Wilson Anti-Famine Institute Bijapur.	Sd/- Sd/- English H.K.

TRUE COPY

Prepared by

x.x.x.
Maintenance Surveyer Bagalkot

Assistant Registrar, ----------
Cooperative Societies Bijapur.

P.R.Extract ENGLISH VERSION

City Survey Bagalkot Ward No. III

C.T.S.No.	Area	Tanure
440	82	~~Tenure~~ &

19-1-40	Holder - Ravaji Subbanji Legal heir sons application dated 1-10-1939 Encumbrance kept as per intimation received from the D.C.O. under his No.654 dated 11-3-1949 as this arbitration case No.355/1949 as this and 441/III	(H) Venkatesh Ravaji Zingade A/K Manager (E) Wilson Anti-Famine Institute Bijapur.	Sd/- Sd/- English H.K.

True Copy

Prepared by

x.x.x.
Maintenance Surveyer Bagalkot.

Sd/- C.R.Hiremath
Assistant Registrar,
Cooperative Societies, Bijapur.

8
31-43

Special Civil Suit No.198 of 1950.

In the court of Civil Judge, Senior Division,

Bijapur.

1. Laxman Raojirao Zingade, age 25,
years, profession pleader,
Residence Neharu Road, Bijapur,
District Bijapur... ... Plaintiff.

Vs.

1. The Registrar of Cooperative
Societies, Poona.
2. The Wilson Anti-Famine Institute
having its registered office
at Bijapur... ..... Defendants.

The above-named plaintiff begs to submit as under:-

1. The plaintiff is the owner of properties described below is situated in the Bijapur Taluka, Bijapur District:-

(a) One land bearing R.S.No.333A/2, 7½ gunthas, assessed at Rs.2-10-0 situated at Mahal Bagayat, Bijapur.

(b) All the properties and articles in the cycle shop running under the name and style of L.R.Zingade, Cycle Dealer, Darbar Galli, Bijapur.

(c) All the Shahabad stones in the stone store running under the name and style of L.R.Zingade, stone store situated in Darbar Galli, Bijapur.

(d) All the moveables in the house of the plaintiff in Darbar Galli, at Bijapur.

2. On 12-3-1949, the properties mentioned above were attached by the Revenue Authorities at Bijapur under orders of the District Co-operative Officer, Bijapur, who is the subordinate of the defendant No.1. The orders passed behind the back of the plaintiff are alleged to have been made in Arbitration Case No.A.B.N.255 of 1949 at the instance of Defendant No.2 in which the plaintiff was not made a party.

3. The plaintiff asserts that this attachment made by the subordinate of the defendant is illegal and contrary to law as he has no authority to deal with the propetties belonging to the plaintiff.

4. The plaintiff served a registered notice on the defendant No.1 on 1-8-1949 as per provisions of section 70 of the Bombay Cooperative Societies Act, 1925 and of Section 80 of the Civil Procedure Code 1908, claiming that the attachment was illegal and that the properties were not liable for attachment and that the said subordinate of the defendant be restrained from dealing with the above-mentioned properties.

5. The defendant No.1 has refused to do so on 22nd of August 1949. Hence the plaintiff has brought this suit for a declaration that the attachment effected on 12-3-1949 of the properties mentioned in para 1 above is illegal and ultra-vires and for an

33 to 9

and for an injunction restraining the defendant to deal with the properties to the prejudice of the rights and interests of the rights and intersts of the plaintiff.

6. The orders of attachment made by the Arbitrator are void ab-inito as plaintiff was not and could not be a party to the said proceedings. The arbitration could only be between the members of the Society and the society. As plaintiff is not the member of defendant No.2 the orders passed by the arbitrator are not binding on the plaintiff.

7. The alleged proceedings in which the said orders are said to be passed are illegal, ultra vires and void, as they are not between members of the society and the society. Hence the orders of attachment of are illegal and void.

8. The cause of action for this suit arose on 12-3-1949 when the attachment was made in the ~~Bijapur~~ City of Bijapur within the jurisdiction of this court.

9. The suit being one for a declaration and injunction(Consequential relief), the relief is valued at Rs.5/- and the minimum court fees of Rs.5/- prescribed under Section 7, clause IV(c) of the Court Fees Act, is paid. The valuation for the purpose of jurisdiction and pleaders' fees is the same.

10. This court has jurisdiction to try the suit as the parties reside within its jurisdiction and the cause of action also arose within its jurisdiction.

11. The plaintiff prays:-

(i) For a declaration that the attachment effected regarding the properties mentioned in para 1 of the plaint of 12-8-1949 is illegal and ultra vires and that the same is not binding on the plaintiff.

(ii) For an injunction against the defendants restraining them from dealing with the suit properties themselves, or through the arbitrator in Arbitration case No. A.B.N/255 of 1949 by passing any further orders in respect thereof.

(iii) For the costs of the suit.

(iv) For permission to amend the plaint if and when necessary

Bijapur.
10-3-1950.

I, Laxman Raojirao Zingade of Bijapur, declare that the contents of the above paragraphs in the plaint are true within my personal knowledge and belief. Verified at Bijapur this 10th day of March, 1950.

Bijapur.
10-3-1950.

Sby.

Civil Suit No. 199 of 1950. 35 54 12

In the court of the Civil Judge, Senior Division,

At Bijapur.

1. Venkatesh Raojirao Zingade, age 38,
& Profession Government service,
Reporter (C.I.D.) Resident of
Bagalkot, now residing at Karwar,
H. No.1673, Kajubag, Karwar,
District Karwar. ... ... Plaintiff.

Vs.

1. The Registrar of Co-operative
Societies, Poona.
2. The Wilson-Anti-famine Institute
having its registered office
at Bijapur... ... . Defendants.

The above-named plaintiff begs to submit as under:-

1. The plaintiff is the owner of the houses described below situated at Bagalkot, taluka Bagalkot, District Bijapur.

	S.No.	City	S.No.	Area	Ward	Place.
(a)	1	440	Sqr.Yds.	82	III	Bagalkot.
(b)	2	441	"	210	III	Bagalkot.

2. Such being the case, the Revenue Authorities at Bagalkot attached the properties mentioned above, under the orders of the District Cooperative Officer, Bijapur, who is the subordinate of the defendant No.1. The orders passed behind the back of the plaintiff are said to have been made by him as the Arbitrator in Arbitration case No. A.B.N/255 of 1949 at the instance of defendant No.2 to which the plaintiff was not a party. The plaintiff has come to know of the said order from the endorsemen on city survey extracts.

3. The orders referred to above in para 2 are void ab-inito as the plaintiff was not a party to the said proceedings. The arbitration could only be between the members of the Society. As plaintiff is not a member of the defendant No.2 the orders passed by the arbitrator are not binding on the plaintiff.

4. The plaintiff asserts that this attachment made by the subordingate of the defendant No.1 is illegal and ultra vires as he has no authority to deal with the properties of the plaintiff.

5. The alleged proceedings in which the said orders are said to be passed are illegal ultra vires and void. Hence the order of attachment is illegal and void.

6. The plaintiffs served a registered notice on the deft No.1 on 29th July 1949 as per provisions of Sec. 70 of the Bombay Cooperative Societies Act, 1925 and of the section 80 of C.P.C. 1908 claiming that the said attachment was illegal and that a declaration be made to the effect that the properties were not liable for attachment and that the said subordinate of the deft.No.1

37 53 43

subordinate of the deft.No.1 be restrained from dealing with the above mentioned properties.

7. The defendant No.1 has refused to do so on 22-8-1949. Hence the plaintiff has brought this suit for a declaration that the attachment effected on 12-3-1949 of the properties mentioned in para 1 of above is illegal and ultra vires and for an injunction restraining the defendant from dealing with the properties to the prejudice of the rights and interests of the plaintiff.

8. The cause of action for this suit arose on or about 5-6-1949 when the attachment came to the knowledge of the plaintiff and also when the attachment was made at Bagalkot within the jurisdiction of this court.

9. The suit being one for a declaration and injunction (Consequential relief), the relief is valued at Rs.5/- and the minimum court fees of Rs.5/- prescribed under Section 7 clause IV (c) of the Court Fees Act is paid. The valuation for the purpose of jurisdiction and pleaders' fees, is the same.

10. This Court has jurisdiction to try the suit as the parties reside within its jurisdiction and the cause of action also arose within its jurisdiction.

11. The plaintiff prays :-

i) For a declaration that the attachment effected regarding the properties mentioned in para 1 of the plaint on or about 12-3-1949 is illegal and ultra vires and that the same is not binding on the plaintiff.

ii) For an injunction against the defendants restraining them from dealing with the suit properties themselves or through the arbitrator in Arbitration case No.A B N/255 of 1949 by passing any further orders in respect thereof.

iii) For the costs of the suit.

iv) For permission to amend the plaint if and when necessary.

I, Venkatesh Raojirao Zingade, declare that the contents of the above paragraph in the plaint are true within my personl knowledge and belief. Verified on

SUIT NO 198 of 1950

39 46 59

Information as per Rule 118 of the Law Officers' Rules

1. The number of the suit:-		Suit No. 198
2. The date on which & the Court in which, it was instituted	:-	The case has been instituted by on 10-3-1950 in the Court of Civil judge, Senior Division, Bijapur.
3. The Name of all the parties	:	Shri L.R.Zingade ....Plaintiff Versus 1 Shri The Registrar, Cooperative Societies, B.S., Poona: 2. Wilson Anti-Famine Institute Bijapur..:Defendant
4. The amount or value of the claim.	:	The suit has been instituted for a declaration that the properties of the Plaintiff attached by the ~~Arbitrator~~ is illegal and ultra -vires and that the same is not binding on the Plaintiff.
5. The date fixed by the Court for the first hearing .	:	The date was fixed on 12-6-1950 by the Civil Court, Junior Division, Bijapur. Now the case is transferred to the Civil Court, Senior Division Bijapur. 19-12-1950 is the date fixed by the Civil Court, Sr.Dn. Bijapur for hearing.
6. Whether notice of the action has been given under Sec. 80 of the C.P.Code, and, if so, the date of delivery of such notice.	:	Notice dated 29-7-1949 was served and under this office letter No. ABN/5963, dated 22-8-49 (Copy enclosed) the said notice was returned & Shri L.R.Zingade was asked to approach the B.C.Tribunal in the matter..

Registrar's nominee

II(a) A copy of the plaint in the regional language, together with copies of any documents or list of documents annexed to the plaint.

The plaint is in English , No plaint in regional language is, therefore sent.

(b) A translation of the same in English typed in half margin, the more important of the statements therein being distinctly marked with letters(a),(b),etc and notes being added in the margin stating whether such statements are correct or not, and if not, in what respect they are inaccurate, (when the requisite explanation cannot be thus compressed, reference should be made to the paragraph of the accompanying statement in which the matter should be fully discussed).

A copy of the plaint in English is enclosed herewith The Remarks on each of the para in the plaint is given below.

Para 1,2 & 3:-

When the Institute came to know that the amount has been misappropriated by the clerk Shri.R.R.Zingade, now suspended, the brother of the plaintiff, it referred the case to arbitration, The District Cooperative Officer, Bijapur, was

41 17 61

was appointed as the Registrar's Nominee to decide the dispute. The Registrar's Nominee attached the properties mentioned in the plaint under Section 55 of the Bombay Cooperative Societies Act, 1925. The order along with the list of property was served by the Arbitrator on 11-3-1949. As the land bearing R.S.No. 333-A/2,7½ gunthas situated at Mahal Bagayat,Bijapur has been purchased for Rs 4000/- in the name of Shri L.R.Zingade on 28-10-1948 immediately after misappropriation of funds by Shri R.R.Zingade.It is suspected that the property was purchased out of the monies misappropriated by Shri R.R.Zingade.

Para 4:-

The attachment order issued by the Registrar's Nominee is not illegal as the Registrar's Nominee is competant to pass orders under Section 55 of the Bombay Cooperative Societies,Act.

Para 6:-

Letter dated 27-7-1949 was received from Shri V.R. Zingade.But the same was returned under this office letter No.ABN/5963,dated 22-8-1949 to Shri L.R.Zingade and he was informed to approach the B.C.Tribunal in the matter(copy enclosed).

Para 7:-

Copy of letter No.ABN/5963,dated 22-8-1949 is enclosed herewith. Therein Shri L.R.Zingade was informed to approach the B.C.Tribunal in the matter since appeal under Section 56 of the Bombay Cooperative Societies Act are to be made to the Tribunal.

Para 11:-

No remarks are necessary.

(c) A full and detailed statement:-

1. The circumstances which led to the suit.

Shri. R.R.Zingade, the brother of the plaintiff was employed as a clerk in the Wilson Anti-Famine Institute in June 1945. In the course of time he misappropriated the funds of the Institute. This fact was brought to light when the accounts were audited by the Auditor, then he was suspended from 1-10-1948, and the case was referred to arbitration for the recovery of sum misappropriated and criminal proceedings were also started against him,by passing a resolution(copy enclosed) The ~~Tribunal~~ proceedings are going on in the court of the Resident Magistrate I Class,Bijapur. The Arbitrator attached the suit properties on the information supplied to him by the Institute for which the plaintiff has filed a suit alleging that the properties attached are in his name. As Shri R.R.Zingade is the Manager of the Joint Hindu Family and as it is suspected that the properties standing in the name of the plaintiff are purchased out of the amount misappropriated by Shri R.R.Zingade,they have been attached by the ~~Arbitrator~~ Registrar's Nominee

2. ~~Of~~ the course which it is proposed to adopt namely,~~whether~~ whether to admit, compromise or defend the suit and of the reasons for the same.

The Registrar or the District Cooperative Officer who is the Registrar's Nominee is not interested in contesting the suit. I and he will abide by the Court's decision.

... SUIT NO 199 of 1950 43 67 20

Information as per Rule 118 of the Law Officers Rules.

1.The number of the suit:-		Suit No. 199
2.The date on which & the Court in which, it was instituted	:	The case has been instituted on 10-3-1950 in the Court of Civil Judge, Senior Division,Bijapur.
3.The names of all the parties.	:	Shri V.R.Zingade..... Plaintiff Versus 1.The Registrar,C.S,Poona 2.Wilson Anti-Famine Institute,Bijapur. ...Defendants.
4.The amount or value of the claim.	:	The suit has been instituted for a declaration that the properties of the plaintiff attached by the ~~Arbitrator~~ Registrar's Nominee is illegal and ultra-vires and that the same is not binding on the plaintiff.
5.The date fixed by the Court for the first hearing.		The date was fixed on 12-6-1950 by the Civil Court,Junior Division,Bijapur.Now the case is transferred to the Civil Co Court,Senior Division,Bijapur.19-12-195 is the date fixed by the Civil Court Sr.Dn.Bijapur for hearing.
6.Whether notice of the action has been given under Sec.80 of the C.P.Code,and,if so, the date of delivery of such notice.	:	Notice dated 27-7-1949 was served and under this office letter,ABN/5963, dated 22-8-49(copy enclosed) the said notice was returned & Shri V.R.Zingade was asked to approach the B.C.Tribunal in the matter.

II(a) A copy of the plaint in the regional language,together with copies of any documents or list of documents annexed to the plaint.

The plaint is in English,.No plaint in regional language is,therefore, sent.

(b) A translation of the same in English typed in half margin,the more important of the statements therein being distinctly marked with letters(a),(b) etc. and notes being added in the margin stating whether such statements are correct or not, and if not, in what respect they are inaccurate,(when the requisite explanation cannot be thus compressed,reference should be made to the paragraph of the accompanying statement in which the matter should be fully discussed).

A copy of the plaint in English is enclosed herewith. The remarks on each of the para in the plaint is given below.

Para 1,2 & 3:-

When the Institute came to know that the amount has been misappropriated by the clerk, Shri R.R.Zingade now suspended, the brother of the plaintiff, it referred the case to arbitration. The District Cooperative Officer,Bijapur was appointed as the ~~Arbitrator~~ Registrar's Nominee.The ~~Arbitrator~~ attached the properties mentioned in the plaint under Section 55 of the Bombay Cooperative Societies Act 1925. The order along with the list of property was served by the ~~Arbitrator~~ Registrar's Nominee on 11-3-1949. Shri R.R.Zingade is Manager of the Joint Hindu family, he has got a share in the ancestral properties standing in the name of the Plaintiff and attached by the ~~Arbitrator~~. Registrar's nominee.

Para 4:-

45 2+17 6

Para 4:-

The attachment order issued by the Registrar's Nominee is not illegal as the Registrar's Nominee is competent to pass orders under Section 55 of the Bombay Cooperative Societies Act.

Para 6:-

Letter dated 29-7-49 was received from Shri V.R.Zingade but the same was returned under this office letter No.ABN/5963, dated 22-8-49 to Shri V.R.Zingade and he was informed to approach the B.C.Tribunal in the matter(Copy enclosed).

Para 7:-

Copy of letter No.ABN/5963,dated 22-6-1949 is enclosed herewith.Therein Shri V.R.Zingade was informed to approach the B.C.Tribunal in the matter since appeal under Section 56 of the Bombay Cooperative Societies Act are to be made to the Tribunal.

Para 11:-

No remarks are necessary.

(c) A full and detailed statement:-

1. The circumstances which lead to the suit.

Shri R.R.Zingade, the brother of the plaintiff was employed as a clerk in the Wilson Anti-Famine Institute in June 1945. In the course of time he misappropriated the funds of the Institute. This fact was brought to light when the accounts were audited by the Auditor.Then he was suspended fro 1-10-1948, and the case was referred to arbitration for the recovery of sum misappropriated and criminal proceedings were also started against him, by passing a resolution (copy enclosed).The criminal proceedings are going on in.the Court of the Resident Magistrate I Class,Bijapur. The ~~Arbitrater~~ Registrar's Nominee attached the suit properties on the information supplied to him by the Institute for which the plaintiff has filed a suit alleging that the properties attached are in his name. As Shri R.R.Zingade is the Manager of the Joint ~~Family~~ Hindu Family and as he has got a share in the properties standing in the name of the plaintiff, they have been attached by the ~~arbitrator~~. Registrar's Nominee.

2 ~~Of~~ the course ~~course~~,which it is proposed to adopt namely whether to admit,compromise or defend the suit and of the reasons for the same.

The Registrar or the District Cooperative Officer who is the Registrar's Nominee is not interested in contesting the suit. I and he will abide by the Court's decision.

47 75 24

No.ABN/5963
Poona, the 22nd August 1949

From

The Joint Registrar, Cooperative Societies,
Bombay State, Poona.

To

Venkatesh Raojirao Zingade Esqr.
House No.1673, Kajubag,
Karwar.

Subject:- Attachment of the properties.

Sir,

I have the honour to return herewith your letter, dated 27-7-1949 on the subject noted above and to invite your attention to Section 56 of the Bombay Cooperative Societies Act according to which you can prefer an appeal to the Bombay Cooperative Tribunal, Bhagwan Bhuwan (First Floor), Mint Road, Fort Bombay, within one month of the date of the order passed under Section 55 of the Bombay Cooperative Societies Act.

Yours faithfully,

Sd/- R.N.Trivedi
Joint Registrar, Cooperative Societies,
Bombay State, Poona.

49-77-25

No.ABN/5963
Poona, the 22nd August 1949

From

The Joint Registrar, Cooperative Societies,
Bombay State, Poona.

To

Venkatesh Raojirao Zingade Esqr.
House No.1673, Kajubag,
Karwar.

Subject:- Attachment of the properties.

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Yours faithfully,

Sd/- R.N.Trivedi
Joint Registrar, Cooperative Societies,
Bombay State, Poona.

No.ABN/5963 nd
Poona, the 22/August 1949.

From

The Joint Registrar, Cooperative Societies,
Bombay State, Poona.

To

Laxman Raojirao Zingade Esqr., Pleader,
Bijapur.

Subject:- Attachment of the properties.

Sir,

I have the honour to return herewith your letter dated 29-7-1949 on the subject noted above and to invite your attention to Section 56 of the Bombay Cooperative Societies Act according to which you can prefer an appeal to the Bombay Cooperative Tribunal, Bhagwan Bhuwan (First Floor), Mint Road, Fort, Bombay within one month of the date of the order passed under Section 55 of the Bombay Cooperative Societies Act.

Yours faithfully,

Sd/- R.N.Trivedi.
Joint Registrar, Cooperative Societies,
Bombay State, Poona.

53 81 27

No.ABN/5963 nd
Poona, the 22/August 1949.

From

The Joint Registrar, Cooperative Societies,
Bombay State, Poona.

To

Laxman Raojirao Zingade Esqr., Pleader,
Bijapur.

Subject:- Attachment of the properties.

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I have the honour to return herewith your letter dated 29-7-1949 on the subject noted above and to invite your attention to Section 56 of the Bombay Cooperative Societies Act according to which you can prefer an appeal to the Bombay Cooperative Tribunal, Bhagwan Bhuwan (First Floor), Mint Road; Fort, Bombay within one month of the date of the order passed under Section 55 of the Bombay Cooperative Societies Act.

Yours faithfully,

Sd/- R.N.Trivedi.
Joint Registrar, Cooperative Societies,
Bombay State, Poona.

53 - 92

January 19511

198 and 199 of 1950, on
lge, Sr.Division,

en No. dated the 27th
above.

, dated the 21st
t Pleader, Bijapur,
overnment Pleader
both the suits to
f defendants.
nt may be moved to
rly date.

Bhagwat,

oopve. Societies,
tate, Poona.

No. 867, dated the
Pleader, Bijapur,
ry to Government,

Coop: Societies, B.S.
oona.

L. D.
8 JAN 1951

53 - 93

Letter.-

To

The Secretary to Government,
Development Department, Bombay.

No. ABH/5963 of 1951. Poona, the 5 January 1951

Subject:- Bijapur Civil Suit Nos. 198 and 199 of 1950, on the file of the Civil Judge, Sr.Division, Bijapur.

Reference this office letter of even No. dated the 27th December 1950, on the subject above noted above.

2. I enclose a copy of letter No. 867, dated the 21st December 1950, from the District Government Pleader, Bijapur, wherefrom it would be seen that District Government Pleader has intimated that the Court has adjourned both the suits to 25th January 1951 for written statements of defendants. I should, therefore, request that Government may be moved to sanction the defence of the suits at an early date.

Sd. N.P.Bhagwat,

Joint Registrar, Coopve. Societies,
Bombay State, Poona.

LEGAL DEPARTMENT
464
N.W.6.1.

Copy together with a copy of letter No. 867, dated the 21st Decr.1950, from District Government Pleader, Bijapur, forwarded with compliments to the Secretary to Government, Legal Department, Bombay.

Joint Registrar, Coop: Societies, B.S.
Poona.

Sabtd. for information
Awaiting bps. from Dev. Deptt.

9-1

A-Sotty

9/1

~~65~~ 57

No. 867 of 1950.
Date:21-12-1950.

To

The Joint Registrar, Coop: Societies,
Bombay State, Poona.

Subject:- Bijapur Civil Suit Nos. 198 and 199 of 1950,
on the file of the Civil Judge Sr. Dn., Bijapur.

Sir,

With reference to your No. ABN/5963, of 1950, dated 9th December 1950, I have the honour to inform you that on 19th Dec. 1950 I applied in both the suits for 3 months time for filing written statement. The Court has adjourned both the suits to 25-1-1951 for written-statements of defendants. I, therefore, request you tom move the Government to sanction the defence of the suit very early.

Yours faithfully,

Sd. x. x. x.

Dist. Goverment Pleader, Bijapur.

L. D.
13 JAN 1951

(Below copies of letter No.ABN/5963 of 1951 dated 5th January 1951 from the Registrar of Co-operativ Societies and its accompaniments).

Very Urgent

No.CSM/7250-D,
Development Department,
Mercantile Bank Building,
Mahatma Gandhi Road,
Bombay No.1, 12th January 1951.

Forwarded to the Remembrancer Legal Affairs in continuation of Government Memorandum of even number dated 9th January 1951.

By order of the Governor of Bombay,

Assistant Secretary to the Government of Bombay,
Development Department.

889
A-14-1-57

R/R.
12/1/51.

Letter.

61 - 4

To

The Secretary to Government,
Development Department, Bombay.

No.ABN/5963 of 1951. Poona, the 5th January 1951.

Subject:- Bijapur Civil Suit Nos. 198 and 199 of 1950, on the file of the Civil Judge, Sr.Division, Bijapur.

Reference this office letter of even No. dated the 27th December 1950, on the subject noted above.

2. I enclose a copy of letter No. 867, dated the 21st December 1950, from the District Government Pleader, Bijapur, wherefrom it would be seen that District Government Pleader has intimated that the Court has adjorned both the suits to 25th January 1951 for written statements of defendants. I should, therefore, request that Government may be moved to sanction the defence of the suits at an early date.

Sd/-

Joint Registrar, Coopve. Societies,
Bombay State, Poona.

RPR.
12/1/51.

63 - 71

No. 867 of 1950.
Date 21-12-1950.

To

The Joint Registrar, Coop. Societies,
Bombay State, Poona.

Subject:- Bijapur Civil Suit Nos. 198 and 199 of 1950, on the file of the Civil Judge Sr. Dn., Bijapur.

Sir,

With reference to your No. ABN/5963, of 1950, dated 9th December 1950, I have the honour to inform you that on 19th Dec. 1950 I applied in both the suits for 3 months time for filling written statement. The Court has adjorned both the suits to 25-1-1951 for written -statements of defendants. I, therefore, request you to move the Government to sanction the defence of the suit very early.

Yours faithfully,

Sd/-

Dist. Government Pleader, Bijapur.

RPR.
12/1/51.

L D

Bijapur C.S. Nos. 198 & 199 of 1950.

DSP states that 25-1-1957 is fixed for hrg. requests that defence shd be sanctioned before that. Papers of the case have been read in this office only on 11-1-57 hence the DSP may reported apply for a further adj. if the defence is not sanctioned by 25th inst.

11/1. A Sols.

by 15/1.

No. 1057 65-93
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 17th January 1951.

Subject:- Civil Suits Nos. 198 and 199 of 1950.

MEMORANDUM.

With reference to his letter No. 867 dated the 21st December 1950 addressed to the Joint Registrar Cooperative Societies Bombay State Poona the District Government Pleader, Bijapur is requested to apply for a further adjournment on 25th January 1951 if the defence of the suits noted above is not sanctioned by that date.

Subt for sign
16/1

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

P.H.R.
16/1

Issued
17/1

67.

LETTER

To

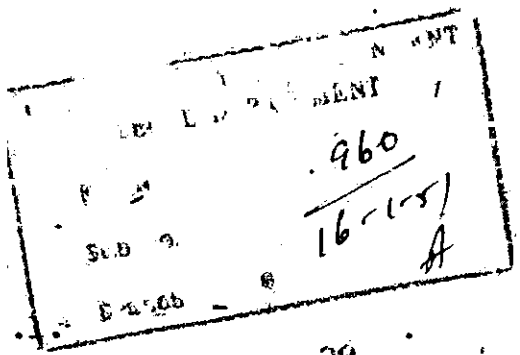
The Secretary to Government,
Legal Department, Bombay.

No. A3N/5963 of 1950. Poona, the 12th January 1951.

Subject:- Civil Suits No. 198 & 199 of 1950.

Reference Government Endorsement, Development Department, No. 3SR/7250-D, dated the 9th January 1951, forwarding this office letter of even No., dated the 27th December 1950, on the subject noted above.

As the date fixed for filing a written statement is 25th January 1951, I should request that Government may be moved to sanctione the defence of the suits at an early date.



V. Subramanian

Deputy Registrar of Co-operative Societies. (Audit)
State of Bombay, Poona.

The Chi. has seen this
1815.

No. 101 of 1951.
Date:- 7-2-1951.

69 77

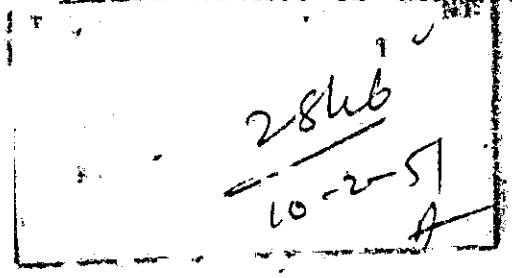
To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Civil Suits Nos 198 and 199 of 1950.

Sir,

With reference to your Memorandum No.1057 of 17-1-1951, I have the honour to state that on 25-1-1951 I applied to the Court for 2 month's time to file the Written-statement. The court has now adjourned the suit to 7-3-1951 for filing written-statement on behalf of deft No.1. I therefore request you to move Government to sanction the defence of the above suits early.



Yours faithfully

I C Rao

Dist.Govt.Pleader,Bijapur.

Submitted for information
AE
12/2 A. Colv.

12.2.

L. D.
27 APR 1951

Letter.

To.

The Secretary to Government,
Legal Department, Bombay I.

No. ABN.5963. Via Poona, 24th April 1951.

Subject:- Civil Suits No.198 and 199 of 1950.

Reference correspondence ending with this office letter No.ABN.5963, dated the 12th January 1951, on the subject noted above.

2. I should request that Government may be moved to sanction the defence of the suits at an early date.

Deputy Registrar, Coop.Societies, (HQ)

File No. 8520
Ser No. E(V)-4-57

Submitted for information.

14/5

Noted

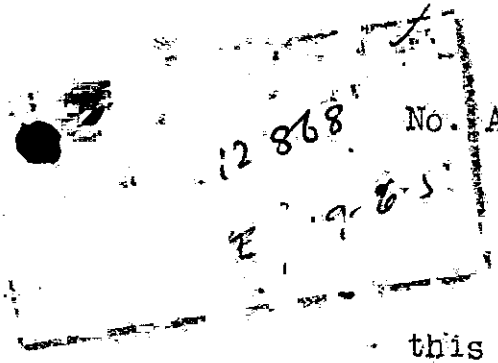
16-5

73 101

Letter.

To

The Secretary to Government,
Legal Department,
Bombay.



No. ABN/5963 of 51. Poona, the 15th June 1951.

Subject:- Civil Suits No. 198 and 199 of 1950.. Filed by Shri V.F. Zingade and L.R. Zingade.

Reference correspondence ending with this office letter of even No. dated 24-4-51 on the subject noted above.

I should request that Government may be moved to sanction the defence of the suits at an early date.

V Subramanian

Deputy Registrar,
Cooperative Societies,(H.Q.) Bombay State,
Poona.

KS

mg/14-6

Subbed for information.

19/6.

ASOW

19-6.

Subbed.

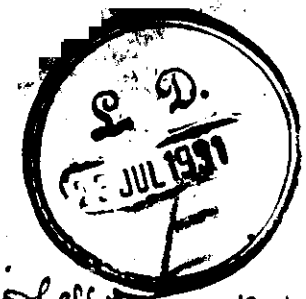
The PBs. received from D.D. are sent up below for information.

26/6

ASOW If all the papers have been received these units should be distributed for Brief in July 1966.

No. 555 of 1951.
Date:- 17-7-1951.

To



The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur Civil Suit No.198 and 199 of 1950.

1. L.R.Zingade plff.
Vs.
1. The Registrar of Co-operative Societies.

---

1. V.R.Zingade plff.
Vs.
1. The Registrar of Co-operative Societies. deft.

Sir,

The above suits were filed by the plaintiff on 10-3-1950.Both the suits were fixed for putting in writtenstatement on 17-7-1951.On an application being given for time the court has passed the following order:-

" A month's time granted. Defts pleaders to note that no further adjournment will be granted".

The date fixed now is 20-8-1951 for putting in written statements in both the suits.I therefore request you to be kind enough to move Government to sanction the defence of the suits early.

Yours faithfully

Dist.Govt.Pleader,Bijapur.

IMMEDIATE. No. 13211

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 17th August 1951

Subject:- Bijapur Civil Suits Nos. 198 and 199 of 1950.

1. L.R. Zingade Plff.
vs.
1. The Registrar of Co-operative Societies,

1. V. R. Zingade Plff.
vs.
1. The Registrar of Co-operative Societies. deft.

MEMORANDUM.

With reference to his letter No. 555, dated the 17th July 1951 on the above subject, the District Government Pleader, Bijapur is informed that two copies of Written Statement in Civil Suit No. 198 of 1950 are sent herewith which may be filed in the Court. He is further requested to prepare a Written Statement in Civil Suit No. 199 of 1950 on similar lines with the addition that the house which is the subject matter of the suit is an ancestral property, and file it in the Court.

A copy of the Written Statement in Civil Suit No. 198 of 1950 has been forwarded to the Registrar Co-operative Societies Bombay State, Poona for his signature and he has been directed to forward the same to ~~you~~ the D.G.P. The District Government Pleader should also forward a copy of the Written Statement in Civil Suit No. 199 of 1950 to the Registrar Co-operative Societies, Bombay State, Poona, for his signature.

He should file the Written Statement in both the suits under his own signature in case he does not receive the Written Statement signed by the Registrar by the due date.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

Copy with a copy of the written statement in Civil Suit No. 198 of 1950 forwarded to the Registrar Co-operative Soc.

As directed by the Solr(M), the above memo. is put up for approval and signature.
NB 17/8
A Solr(M)
By Exp. A.C. Todd

Societies, Bombay State for favour of his signature and forwarding it direct immediately to the District Government Pleader, Bijapur.

BM.
17.8.

29 107

In the Court of the Civil Judge, Senior Division, Bijapur.

Civil Suit No.198-1950.

Laxman Ravjirao Zingade,
age 25, pleader of Bijapur. ----- Plaintiff.

versus

1. The Registrar, Co-operative Societies, Poona,
2. The Wilson Anti Famine Institute, Bijapur. } -- Defendants.

The following is the Written Statement of defendant No.1 in this case.

1. The defendant No.1 does not admit the plaintiff's claim, or any part of it, and puts the plaintiff to the strict proof of the same.

2. This defendant does not admit any statements of fact contained in the plaint, except those which are expressly admitted below.

3. The suit as framed is not maintainable. It is barred under section 57 of the Co-operative Societies Act. The order of attachment before award, passed by a duly appointed arbitrator, cannot be questioned in a Civil Court. Such an order is a part and parcel of the Award proceedings under section 54.

4. If the plaintiff felt aggrieved by the order of attachment before award, made by the Arbitrator, his proper remedy was to file an application to the Arbitrator for the necessary relief, or to file an appeal to the Co-operative Tribunal, under section 56 of the Act. No suit can lie in a Civil Court for a declaration that the order of attachment was illegal, or ultra vires.

5. The plaint does not disclose any cause of action against defendant No.1. The nominee appointed by the Registrar, as Arbitrator, to decide the dispute, becomes, on his appointment, a Special Court with a special jurisdiction, and special powers to try the matter. After his appointment as arbitrator he is not under the control or guidance of defendant No.1. Defendant No.1 cannot be held responsible for any orders passed by the Arbitrator. Defendant No.1 has no powers to direct the Arbitrator to pass a particular order. The arbitrator as such is also not in any sense an agent, or a subordinate, of the defendant No.1. The

Arbitrator is in the position of an Independent Court. The suit as framed against defendant No.1 is therefore misconceived, and is liable to be dismissed.

6. With reference to para 1 of the plaint this defendant contends that the plaintiff is not the sole or exclusive owner of the property described in clauses (a) to (d) of that paragraph. The plaintiff's brother R.R. Zingade has a share and interest in that property as it is the joint family property of the plaintiff and his two brothers, who form a Joint Hindu family. The share and interest of R.R. Zingade in the property was liable to be attached by the arbitrator under section 55 of the Co-operative Societies Act. This defendant contends in the alternative that the property in dispute belonged to R.R. Zingade alone and that the plaintiff, who was only a Benamidar, had no real interest in the same.

7. With reference to para 2 of the plaint this defendant contends that the order of attachment was passed by the District Co-operative Officer as an Arbitrator, and not as a subordinate of defendant No.1. The order passed by the Arbitrator relates to the share and interest of the plaintiff's elder brother R.R. Zingade only, in the property directed to be attached.

8. With reference to para 3 of the plaint this defendant contends that the order of attachment was perfectly legal and valid. The plaintiff's share of the property, if any, was never sought to be dealt with or attached.

9. With regard to para 4 of the plaint this defendant submits that the notice under section 70 of the Co-operative Societies Act, and under section 80, Civil Procedure Code, addressed by the plaintiff to the defendant No.1 were not proper or legal. The order of attachment was legally passed, and defendant No.1 had no power to direct the arbitrator to refrain from dealing with the share and interest of R.R.Zingade in the disputed property.

10. With reference to para 5 of the plaint this defendant submits that the reply sent by this defendant to the plaintiff on 22-2-1949 was proper and legal. By that reply the attention of the plaintiff was drawn to the provisions of section 56 of

the Co-operative Societies Act, and the plaintiff was advised to file an appeal to the Co-operative Tribunal in proper time, if he felt aggrieved by the order of attachment. The plaintiff has failed to take advantage of the information given to him, and has chosen to file this untenable suit. The plaintiff is not entitled to the declaration claimed by him as the order of attachment passed by the Arbitrator was legal, and was within the scope of the powers conferred upon him under section 55 of the Co-operative Societies Act. The plaintiff is also not entitled to the ~~x~~ injunction claimed by him.

11. The allegations in para 6 of the plaint are denied. The dispute was between the Society (defendant No.2) and one of its officers or servants (R.R.Zingade) as regards the management of the funds entrusted to his care. Such a dispute is governed by the provisions of section 54 of the Co-operative Societies Act, and it can be decided ~~xxx~~ only by reference to arbitration under that section. The plaintiff may not have been a member of the society. No order has been passed against the plaintiff or against his share and interest, if any, in the property attached. Only the right, title and interest of R.R. Zingade, ~~was~~ who was a party ~~x~~ to the dispute, were dealt with or by the order of attachment.

12. With reference to para 7 of the plaint this defendant submits that the Arbitration proceedings against R.R. Zingade were ~~xxx~~ perfectly legal and valid, and intra vires. The order of attachment before the award was also legal, valid , and intra vires.

13. As regards para 8 of the plaint this defendant submits that the plaintiff had no cause of action at all. His share and interest in the property, if any, were never attached. But the property in dispute does not belong to him alone. R.R. Zingade, and the plaintiff, and L.R.Zingade, formed a joint Hindu Family, and the property in dispute was part of the joint family property in which each brother had a share and interest at andbefore the date of the order of attachment. In the alternative this defendant contends that the property in dispute belonged exclusively to R.R.Zingade and that the plaintiff was a benamidar for the same.

88—115

14. With reference to para 9 of the plaint this defendant contends that the valuation of the claim for purposes of Court fees and jurisdiction, made by the plaintiff, is not correct or according to law.

15. For these reasons, inter alia, this defendant submits that the plaintiff x is not entitled to the declaration and injunction prayed for by him, and his suit may be dismissed with costs.

District Government Pleader,

I, District Government Pleader, do hereby declare that what is stated in paragraphs 1 to 14 above is true according to the information received and believed to be true. This verification is made at on the day of 1951.

District Government Pleader,

Bijapur Civil Suits Nos 198 and 199 of 1950

87 115

These two suits are filed separately by two brothers for a declaration that an order of attachment before award passed by an Arbitrator under Sect 55 of the Coperative Societies Act, was illegal, ultra vires, and void . Shri. R.R. Zingade, the elder brother of the two plffs, was in the Service of the Wilson Antifamine Institute of Bijapur. That Institute had been duly registered under the Cooperative Societies Act. It was discovered, on audit of the accounts of the Institute that Shri. R.R. Zingade had misappropriated a large amount out of the Funds of the Institute. The Institute wanted to recover the amount from him. The Asst. Registrar then appointed an Arbitrator to decide the dispute under Sect 54 of the Co. So. Act. During the course of the Arbitration proceedings the Arbitrator passed an order under Sect 55 of the Act for the attachment of the moveable and immoveable property of the defaulter in anticipation of the final award. Certain lands, two houses, and some moveable property were then attached. The Plff in suit No 198 alleges that the lands and the moveable property attached by the arbitrator belong to him alone. The Plff in the other suit contends that the two houses belong to him alone. Both the plffs have prayed for a declaration that under the circumstances the order of attachment was illegal, and ultra vires.

It seems that the defaulter R.R. Zingade and his two brothers form a Joint Hindu family, and that the attached property is joint family property, in which the defaulter has a share . It also appears that the misappropriated funds were used, at least in part, for the purchase of of the lands in the name of the plff in suit No 198. There are also technical defences to the suit.

The suit being defensible the defence of the same may be sanctioned on the lines of the accompanying brief.

√ Sol. : Defence sanctioned accordingly

21-8-51

Secy. Dev. Dept 22.8.51

LEGAL DEPARTMENT
File No. 1762
E/24.8.51

L D.
23 AUG 1951
E

No 13360
21/8/51

No. 653 of 1951.
Date 20-8-1951.

To

The Registrar of Co-operative
Societies, Bombay State, POONA.

VERY URGENT.

Subject:- Bijapur Civil Suits Nos. 198 and 199 of 1950.

1.L.R.Zingade. Plff.
Vs.
1. The Registrar of Co-operative Societies.

---

1. V.R.Zingade. Plff.
Vs.
1.The Registrar of Co-opeartive Societies. deft.

Sir,

The above suits were fixed for putting in Written Statements today. The Remembrancer of Legal Affairs has communicated to me that he has forwarded to you a copy of Written Statement in Civil Suit No.198 of 1950 for your signature.I request you to send the same to me after duly signing the same at both the places,

(2). The Remembrancer of Legal Affairs has communi-cated to me to prepare a Written Statement in Civil Suit No.199 of 1950 and to send the same to you for your signature.Accordingly I have prepared the Written Statement and have sent the same to you herewith. I request you to return the same to me duly signed in both the places.

(3). Today I moved the Court for time and both the suits are adjourned to 6-9-1951 for putting in Written Statement. It is therefore requested that both the Written Statements should be returned to me so as to reach me before 4-9-51

Yours Faithfully

Sd. A.C.Angadi.

District Government Pleader,
Bijapur.

P.T.O.

L. D.
AUG 1951

No. 654 of 1951.
Date:-20-8-1951.

Copy with copy of Written Statement in Civil Suit No.199-1950 respectfully submitted to the Remembrancer of Legal Affairs,Bombay, with reference to his Memorandum No. 13211 of 17-8-1951.

A Ahmad

District Government Pleader,Bijapur.

17/538
E/23-8-

71 121

In the Court of the Civil Judge, Senior Division, Bijapur.

Civil Suit No.199 of 1950.

1. Venkatesh Raojirao Zingade, age 38, Government Service, of Bagalkot. ------- Plaintiff.

Vs.

1. The Registrar, Cooperative Societies, Poona,
2. The Wilson Anti Famine Institute, Bijapur. ------ Defendants.

The following is the Written Statement of defendant No. 1 in this suit.

(1). The defendant No.1 does not admit the plaintiff's claim or any part of it, and puts the plaintiff to the strict proof of the same.

(2). This defendant does not admit any statements of facts contained in the plaint, except those which are expressly admitted below.

(3). The suit as framed is not maintainable. It is barred under section 57 of the Bombay Co-Operative Societies Act. The order of attachment before Award passed by duly appointed arbitrator cannot be questioned in a Civil Court. Such an order is a part and parcel of the Award Proceedings under section 54.

(4). If the plaintiff feels aggrieved by the order of attachment before award, made by the Arbitrator, his proper remedy was to file an application to the Arbitrtor for the necessary relief, or to file an appeal to the Co-operative Tribunal, under section 66 of the Act. No suit can lie in a Civil Court for a declaration that the order of attachment was illgal, or ultra vires.

(5). The plaint does not disclose any cause of action against defendant No.1. The nominee appointed by the Registrar, as Arbitrator, to dicide the dispute, becomes, on his appointment, a Special Court with a special jurisdiction, and special powers to try the matter. After his appointment as arbitrator he is not under the control or guidence of defendant No.1. Defendant No.1

cannot be held responsible for any orders passed by the Arbitrator. Defendant no.1 has no powers to direct the Arbitrator to pass a particular order. The arbitrator as such is also not in any sense an agent, or a subordinate, of the defendant No.1. The Arbitrator is in the position of an Independent Court. The suit as framed against defendant No.1 is therefore misconceived, and is liable to be dismissed.

(6). With reference to para 1 of the plaint this defendant contends that the plaintiff is not the sole or exclusive owner of the property described in clauses A and B of the paragraph. The houses which are the subject matter of the suit described in para 1 of the plaint are the ancestrial property of plaintiff's brother R.P.Zingade and the plaintiff's brother R.P.Zingade has a share and interest in the houses as they are the Joint Hindu family property of the plaintiff and his two brothers who form a Joint Hindu Family. The share and interest of R.P.Zingade in the property was liable to be attached by the arbitrator under section 68 of the Co-operative Societies Act. This defendant contends in the alternative that the property in dispute belonged to R.P.Zingade alone and the plaintiff, who was only a Benamidar, had no real interest in the same.

(7). With reference to para 2 of the plaint this defendant contends that the order of attachment was passed by the District Co-operative Officer as an Arbitrator, and not as a subordinate of defendant No.1. The order passed by the Arbitrator relates to the share and interest of the plaintiff's elder brother R.P. Zingade only, in the property directed to be attached.

(8). With reference to paras 3 and 4 of plaint this defendant contends that the order of attachment was perfectly legal and valid. The plaintiff's share of the property, if any, was never sought to be dealt with or attached. The order of attachment is not void, and the attachment is neither ill gal nor ultra vires as alleged by the plaintiff in paras 3 and 4 of the plaint. The allegation in para 5 of the plaint are not correct. The proceedings

93 123

and the order of attachment referred to in para 5 of the plaint are legal, and intra vires and valid. Further the allegations in paras 3,4 and 5 of the plaint are denied. The dispute was between defendant No.2 and one of its servants R.P.Zingade as regards to the management of the funds entrusted to his care. Such a dispute is governed by section 54 of the Co-operative Societies Act and it can be decided only by reference to arbitration under that section. The plaintiff may not have been a member of the Society. No order has been passed against him, or his share, if any, in the property attached. Only the right title and interest of R.R.Zingade who was a party to the dispute were dealt with by the order of attachment.

(9). With reference to para 6 of the plaint this defendant submits that the notice under section 70 of the Co-operative Societies Act, and under section 80, Civil Procedure Code, addressed by the plaintiff to the defendant No.1, were not proper or legal. The order of attachment was legally passed, the defendant No.1 had no power to direct the arbitrator to refrain from dealing with the share and interest of R.P.Zingade in the disputed property.

(10). With reference to para 7 of the plaint this defendant submits that the replysent by this defendant to the plaintiff on 22-8-1949 was proper and legal. By that reply the attention of the plaintiff was drawn to the provisions of section 60 of the Co-operative Societies Act, and the plaintiff was advised to file an appeal to the Co-operative Tribunal in proper time, if she felt aggrieved by the order of attachment. The plaintiff has failed to take advantage of the information given to him, and has chosen to file this untenable suit. The plaintiff is not entitled to the declaration claimed by him as the order of attachment passed by the Arbitrator was legal, and was within the scope of the powers conferred upon him under section 55 of the Co-operative Societies Act. The plaintiff is also not entitled to the injunction claimed by him.

(11). As regards para 9 of the plaint this defendant submits the plaintiff had no cause of action at all. His share and interest in the property, if any, were never attached, but the property in dispute does not belong to him alone. ....Zingade, and the plaintiff, and L.B.Zingade, formed a joint Hindu family, and the property in dispute was part of the joint family property in which each brother had a share and interest at and before the date of the order of attachment. In the alternative, this defendant contends that the property in dispute belonged exclusively to ....Zingade and that the plaintiff was a benamidar for the same.

(12). With reference to para 9 of the plaint this defendant contends that the valuation of the claim for purposes of Court fees and jurisdiction, made by the plaintiff, is not correct or according to law.

(13). For these reasons, inter alia, this defendant submits that the plaintiff is not entitled to the declaration and injunction prayed for by him, and his suit may be dismissed with costs.

The Registrar of Co-operative Societies
Bombay State, Poona.

I _____

The Registrar of Co-opeartive Societies, Bombay State, Poona, do hereby declare that what is stated in paras 1 to 13 above is true according to the information received and believed to be true. This verification is made at _____ on the _____ day of _____, 1951.

The Registrar of Co-operative Societies,
Bombay State, Poona.

No. 13717

Office of the Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 27-8- 1951.

Subject: Bijapur Civil Suit No. 198 of 799 of 1950

MEMORANDUM.

The District Government Pleader, Bijapur is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the Written Statement~~ is sent herewith in advance.

Papers of the case in one file received from the Collector accompany.

For Remembrancer of Legal Affairs

To

The District Government Pleader, 24-8.
Bijapur

C.S.7.51.

I send Sd/- 27/8 Sd/- 24/8 Sd/-

W.D. No. 13850 dt. 29-8-51 Sd/- 29/8

Letter.

To,

The Dist. Govt. Pleder.Bijapur.

Subject.:Civil Suit no. 198 & 199 of 1950.
Defecne of

No. ADN/5963 Poona, dated the 22nd Aug. 1951.

Reference letter No. 13211 dated 17 th Aug. 1951 from the the Remembrancer of Legal Affaires, Bombay addressed to you and a co endorsed to this office on the subject noted above.

I enclose the writtem statement in Civil Suit No. 198 of 19 received from the Remembrancer of Legal Affairs duly signed as desired by him.

Sd. P. J. Chinmulgund
Registrar, Co-operative Societ
& director of Agril Marketing &
Rural Finance,
B.S. Poona.

L. C.
27 AUG 1951

Copy forwarded with compliments for information to :

1) The Remembrancer of Legal Affairs, Bombay with referecne to his endors. No. 13211 dated 17th Aug. 1951.
2) The Dy. Registrar, C.S. Belgaum.
3) The Assistant Registrar, C.S. Bijapur.

ASSISTANT TO GOVERNMENT
LEGAL DEPARTMENT
File No. 17769/57
Sub No. E/27/8
Branch

for Registrar, C.S. &
Director of Agril Marketing &
R. F. B.S., Poona.

99 + 99

LETTER.

To

The District Government Pleader,
BIJAPUR.

No. 5963/2 of 1951. Poona, the 27 August 1951.

Subject:- Civil Suits No. 198 and 199 of 1950.
Defence of ...

Reference your letter No. 653, dated the 20th August 1951 on the above subject.

I have already forwarded to you the copy of the written statement in Civil Suit No. 198 of 1950 received from the Remembrancer of Legal Affairs, Bombay, duly signed with my letter No. 5963/2 dated 22nd August 1951. The written statement in Civil Suit No. 199 of 1950 received along with your letter under reference is returned herewith duly signed at both the places.

Sd/- P.J.Chinmulgund.

Registrar of Cooperative Societies,
State of Bombay, Poona.

P.T.O.

Accompt. 1.

VOD/23.8. 18080 E/30 8-51

Sub Branch

Copy forwarded with compliments for information to :-

1. The Remembrancer of Legal Affairs, Bombay.
2. The Deputy Registrar, C.S., Belgaum.
3. The Asstt. Registrar, C.S., Bijapur.

Registrar of Coopve. Societies,
State of Bombay, Poona.

101 +31

No. 923 of 1951.
13-11-1951.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Bijapur Civil suits Nos. 198 & 199 of 1950.

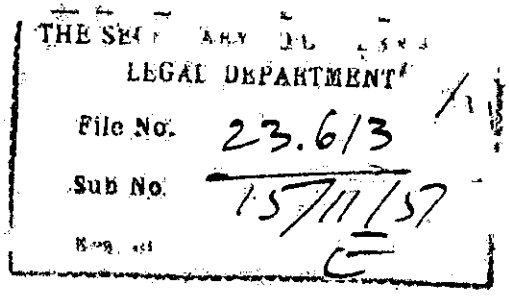
1. Shri Zingade .... plff.
vs.
1. Registrar of Co-oparative Societies.

Sir,

I have the honour to forward herewith copies of issues in the above two suits.

Yours faithfully,

Dist.Govt.Pleader,
Bijapur.



D.G.P. Bijapur sends copy of
issues in C.S. No.S. 198 & 199 of 1950
They are at resch papers.
They appear to be in order
19/4

Sd/-
.....

The issues appear to be in
order.

19-11.

S.O. (Jud.) 20-11-51

Suit No. 198 of 1950. Exh.No. 133

103

ISSUES.

(1) Whether the valuation made of the suit claim for the purposes of Court fees and the Court's jurisdiction is proper? Whether the Court fee paid for the suit is sufficient ?

(2) Whether the plff is the owner of or has any interest in the moveable and immoveable properties in suit ?

(3) Whether the defts prove that the plff is only a Benamidar for his brother R.R.Zingade, who is the real owner of the suit properties ?

(4) Whether the order of attachment made by the Arbitrator affects the plff's interest in the suit properties, if any ?

(5) Whether the suit in its present form for a declaration and injunction is not tenanble ?

(6) Whether this Court's jurisdiction to try this suit is barred by Sec. 57 or any other provision of the Bombay Co-operative Societies Act ?

(7) Whether the notices served by the plff on the deft No.1 under Sec. 70 of the Bombay Co-operative Societies Act and Sec. 80 of the Civil Procedure Code are legal and valid ?

(8) Whether the Arbitrator who made the order of attachment is a servant, agent or subordinate of the deft No.1 ?

(9) Has the plff any cause of action against the deft No.1 ?

(10) Whether the order made by the Arbitrator for attachment of the suit properties, is ultra vires, illegal and void as regards the plff ?

(11) Whether the deft No.2 proves that the plff admitted his liability for its claim against R.R.Zingade ?

(12) If so, is this suit not tenanble ?

(13) Is the suit in time ?

(14) What decree ?

First issue is to be heard as a preliminary issue.

October 26, 1951.

Sd/- M.M.Nadkarni.
Civil Judge,Sr.Dn.

Suit No. 199 of 1950.

Exh.No. 105

ISSUES.

(1) Whether the valuation made of the suit claim for the purposes of Court fees and the Court's jurisdiction is proper? Whether the Court fee paid for the suit is sufficient ?

(2) Whether the plff is the owner of or has any interest in the moveable and immoveable properties in suit ?

(3) Whether the defts prove that the plff is only a Benamidar for his brother R.R.Zingade, who is the real owner of the suit properties ?

(4) Whether the order of attachment made by the Arbitrator affects the plff's interest in the suit properties, if any ?

(5) Whether the suit in its present form for a declaration and injunction is not tenanble ?

(6) Whether this Court's jurisdiction to try this suit is barred by Sec. 57 or any other provision of the Bombay Co-operative Societies Act ?

(7) Whether the notices served by the plff on the deft No.1 under Sec. 70 of the Bombay Co-operative Societies Act and Sec. 80 of the Civil Procedure Code are legal and valid ?

(8) Whether the Arbitrator who made the order of attachment is a servant, agent or subordinate of the deft No.1 ?

(9) Has the plff any cause of action against the deft No.1 ?

(10) Whether the order made by the Arbitrator for attachment of the suit properties, is ultra vires, illegal and void as regards the plff ?

(11) Whether the deft No.2 proves that the plff admitted his liability for its claim against R.R.Zingade ?

(12) If so, is this suit not tenanble ?

(13) Is the suit in time ?

(14) What decree ?

First issue is to be heard as a preliminary issue.

October 26, 1951. Sd/- M.M.Nadkarni.

Suits:

Bijapur.

For a declaration that an order of attachment of property passed by the Arbitrator, appointed by the Registrar of Co-operative Societies for deciding a certain dispute, was illegal, void and *ultra vires*, and for an injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 14490.

Bombay Castle, 12th September 1951.

Letter from the Registrar, Co-operative Societies, Bombay State, Poona, No. ABN/5963, dated the 27th December 1950,—Forwarding the papers in the suits noted in the margin and requesting sanction to their defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

CIVIL SUIT NO 198 OF 1950.

Laxman Raojirao Zingade ... ... Plaintiff;

versus

The State of Bombay ... ... Defendant.

CIVIL SUIT NO. 199 OF 1950.

Venkatesh Raojirao Zingade ... ... Plaintiff;

versus

The State of Bombay ... ... Defendants.

Memorandum to the District Government Pleader, Bijapur, No. 13717, dated the 27th August 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suits on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original for J. R. DHURANDHAR,
Secretary to Government.

L Leg. H 165—1

[P.T.O.

To

The Development Department,
The Registrar, Co-operative Societies, Bombay State, Poona, } with a copy of the brief.

The District Government Pleader, Bijapur (with two copies of the brief).

No. of 1951.

Copy forwarded for information and guidance to

~~139~~
109

BIJAPUR CIVIL SUITS NOS. 198 AND 199 OF 1950.

Chronological Statement of Facts

Two brothers named L. R. Zingade and V. R. Zingade have filed these two suits separately for a declaration that an order of attachment of property passed by the Arbitrator, appointed by the Registrar of Co-operative Societies for deciding a certain dispute, was illegal, void and *ultra vires*. The plaintiff in each suit also prays for an injunction to restrain the Registrar of Co-operative Societies (Defendant No. 1) and the Wilson Antifamine Institute (Defendant No. 2) from dealing with the suit properties in any hereafter.

Shri R. R. Zingade (brother of the two plaintiffs in the two suits) was working as a clerk in the Wilson Anti Famine Institute, which is a Society registered under the Co-operative Societies Act. During the course of the Audit of the accounts of that Institute, it was found that Shri R. R. Zingade had misappropriated a large sum of money out of the Funds of that body. The Society wanted to recover that amount from the defaulter. The Assistant Registrar, Co-operative Societies, then appointed the District Co-operative Officer as Arbitrator, under section 54 of the Act, to decide the dispute between the Institute and Shri R. R. Zingade. During the course of the Arbitration Proceedings the Institute moved the Arbitrator for an order of attachment of the moveable and the immoveable property of the defaulter before the regular award was passed. The Arbitrator was satisfied that it was necessary in the interest of justice to take steps to attach the defaulter's property before the award was passed. Hence under section 55 of the Act the Arbitrator issued an order of attachment before award in respect of certain lands, houses and moveable property. The lands were situate at Mahal Bagayat. The houses were situate at Bagalkot; and the moveable property, consisting of certain goods in a cycle shop, and a quantity of Shahabad Stone in a Stone-store, was at Bijapur. The lands and the moveable property were attached accordingly on 12th March 1949 and the houses were also attached at or about the same time.

It is the contention of L. R. Zingade (plaintiff in suit No. 198 of 1950) that the lands and the moveable property belonged to him alone, and hence they could not be attached by the Arbitrator. He urges that he was not a member of any Co-operative Society, and he was not a party to the Arbitration proceedings. He therefore contends that the order of attachment of his property was illegal, *ultra vires* and void.

Shri V. R. Zingade (the plaintiff in suit No. 199 of 1950) urges that the houses at Bagalkot belong to him alone and therefore the Arbitrator had no power or authority to attach the same. He also urges that the order of attachment was illegal and *ultra vires* as he was not a member of any Society, nor was he a party to the Arbitration proceedings.

The plaintiff in suit No. 198 gave notice of suit on 1st August 1949 and the plaintiff in suit No. 199 gave notice of suit on 29th July 1949. It is also alleged that each plaintiff gave notice to the Registrar of Co-operative Societies under section 70 of the Co-operative Societies Act. Both the suits were filed on 10th March 1950 for the reliefs set out above.

Grounds of Defence.

1. *Notice.*—In each suit the plaintiff has stated that he had given a Notice under section 80, Civil Procedure Code, and another under section 70 of the Co-operative Societies Act. Copies of these Notices are not forwarded to this office. The District Government pleader is therefore requested to inspect the notices from the Court record with a view of finding out if the notices are proper and legal. If it is found that the notices are defective, or that they were not addressed to the proper authority the necessary points may be raised by way of defence. In this connection it may be noted that separate notices are necessary to Defendant No. 1 under section 80, Civil Procedure Code, and section 70 of the Co-operative Societies Act.

2. *Suit not maintainable.*—It seems that the plaintiff's brother Shri R. R. Zingade was in the employ of the Wilson Anti Famine Institute of Bijapur. It is an Institute registered under the Co-operative Societies Act. During the audit of the accounts of that Institute it was found that Shri R. R. Zingade had misappropriated a very large amount from the funds of that body. The Institute wanted to recover the amount from the defaulter. On a reference to the Registrar, Co-operative Societies, it seems that an arbitrator was appointed to decide the dispute between the Institute and Shri R. R. Zingade. The order appointing the Arbitrator was passed by the Assistant Registrar under section 54 of the Co-operative Societies Act. It should be urged that this order of appointment was legal and proper. Shri R. R. Zingade was an officer or servant of the Wilson Anti Famine Institute and a dispute had arisen between that Institute and its servant relating to the business of the society. Such a dispute could be dealt with only under section 54 of the Act. On the appointment of the District Co-operative Officer as a Registrar's Nominee and Arbitrator, under section 54 of the Act the Arbitrator became a Court. He had to decide the dispute judicially. In deciding that dispute he would not be acting as a subordinate of the Registrar. The latter could have no control over the judicial functions of the arbitrator. In paragraph 2 of the plaint in suit No. 198, and in the similar paragraph in the other suit, the plaintiff had suggested that the Arbitrator had been acting as a subordinate of the Registrar in discharging his duties as an Arbitrator. That contention is clearly untenable. The suit is filed against the Registrar, Co-operative Societies, on the basis that the arbitrator is his subordinate in discharging his judicial duties as arbitrator. That notion is clearly wrong. It would follow that the Registrar cannot be held responsible for the orders that an Arbitrator may pass in the course of Arbitration proceedings. Under the present Co-operative Societies Act the Registrar is not even a Court of appeal in connection with awards passed by Arbitrators under section 54 and orders issued under section 55 of the Act. An appeal from the award and other orders passed by an Arbitrator lies to the Co-operative Tribunal constituted under section 63A of the Act, and not to the Registrar. It should be urged therefore that a suit cannot be filed against the Registrar in respect of any orders passed by an Arbitrator in the course of Arbitration Proceedings.

3. *The order of attachment was legal and intra vires.*—It seems that during the Arbitration proceedings the Wilson Anti Famine Institute moved the

Arbitrator for an order of attachment before award, on the ground that the defaulter was about to dispose of his property with a view to delay or defeat the execution of the award that may be passed against him. The Arbitrator has power under section 55 of the Act to pass an order of attachment of the defendant's property under certain circumstances. Such an order was passed in this case against the moveable and immoveable property of the defaulter R. R. Zingade. Under that order certain lands situate in the village Mahal Bagayat, and two houses situate at Bagalkot, and some moveable property at Bijapur were attached. It is the contention of each plaintiff in the two suits that this order of attachment before award was illegal, *ultra vires*, and void. That contention should be denied and disputed and it should be urged that the order of attachment was legal, *intra vires*, and valid.

4. It is mainly urged by the plaintiff in suit No. 198 that the lands at Mahal Bagayat and the moveable property at Bijapur belong to him alone and therefore the order of attachment was illegal. It is urged by the plaintiff in suit No. 199 that the two houses at Bagalkot belong to him alone and for that reasons the order of attachment was illegal. These allegations should be denied and disputed and it should be urged that these properties were joint family properties of the two plaintiffs and their brother R. R. Zingade, who was the defaulter and the defendant, in the arbitration proceedings. R. R. Zingade, as a coparcener, had a share and interest in these properties along with his two brothers. The order of attachment affects only the share and interest of the defaulter. It seems that the three brothers form a joint Hindu family even now. In any case there is a presumption of their jointness to start with. It is for the two plaintiffs in the two suits to prove that they had separated from their brother R. R. Zingade. It seems that the lands at Mahal Bagayat were purchased recently, and the funds for the same came from the joint family purse. It was immaterial that the sale deed was taken in the name of L. R. Zingade the plaintiff in suit No. 198. The defendant's case further is that in fact the funds misappropriated from the Anti Famine Institute had been utilised for purchasing this property, and for carrying on the cycle shop and the business in Shahabad stones. The three brothers treated those funds as their common property and utilised them in this way. Therefore all the property in dispute in suit No. 198 was the joint property of the three brothers. In the alternative it may be contended that the lands belonged to R. R. Zingade alone as the funds misappropriated by him were utilised for purchasing the lands in the name of his brother L. R. Zingade. The latter was only a Benamidar for the former. It should be also urged that in any case the three brothers had been treating the entire property in dispute in suit No. 198 as their joint property. It was mixed up by them with other joint family property, and therefore it became joint family property, in which each brother had a share.

As regards the two houses at Bagalkot it seems that they were the ancestral property of the three brothers. They were entered in the name of V. R. Zingade on the death of the father. But V. R. Zingade is not the exclusive owner of these houses. The defaulter R. R. Zingade had a share and interest in this property. The share and interest of the two plaintiffs, if any, were never sought to be attached, and were not attached.

As the defaulter had some share or interest in the attached properties the order of attachment would be legal and valid, and within the powers of the arbitrator under section 55 of the Co-operative Societies Act. In that case there would be no cause of action for the two plaintiffs as their share and interest, if any, were never sought to be attached or dealt with. As far as the lands at Mahal Bagayat are concerned it may be further contended that they are the exclusive property of the defaulter, R. R. Zingade, and the plaintiff in suit No. 198 has no share or interest in the same, as he was only a benamidar for R. R. Zingade. The same is probably true of the moveable property in that suit.

But assuming that the properties in dispute belonged exclusively to the two plaintiffs, and that the defaulter R. R. Zingade had no share or interest in the same, the next question is whether the proper remedy of the plaintiffs is by way of a suit of this kind. It should be urged that no suit can lie for a declaration of the invalidity of an arbitrators order. Section 55 of the Co-operative Societies Act empowers an Arbitrator to pass an order of attachment in anticipation of an award. Section 56 then provides that any party aggrieved by an order passed under section 55 of the Act may appeal to the Co-operative Tribunal. In that section the word "Party" must be given a wide meaning. It would include not only persons who are plaintiffs or defendants in the Arbitration proceedings before the Arbitrator, but also all persons who are affected by the order. It seems from the record that the plaintiffs in these suits had been advised by the Registrar to file appeals to the Co-operative Tribunal under section 56 if they felt aggrieved by the order of attachment. See page 24 of the Collector's Report. It should be urged that the Co-operative Societies Act is a special Act for regulating the affairs of, and all questions relating to, Co-operative Societies and other bodies governed by its provisions. When the special Act provides a special remedy for a particular situation that remedy must be availed of by the aggrieved person. Such a special remedy provided by the special Act impliedly excludes a suit for the same relief.

It may be further urged that the order of attachment was passed by the Arbitrator during the course of the Arbitration proceedings. The order is a part of the award as the attachment would subsist and continue as a part of the relief, after the award was made. Under section 57 of the Co-operative Societies Act an award passed by an Arbitrator shall not be liable to be challenged or called in question in any Civil Court. The plaintiff's suit for a declaration of the invalidity of a part of the award was therefore untenable.

In this connection the attention of the Court may be drawn specifically to the reliefs claimed in the two plaints. The plaintiff in each suit does not claim a declaration that the property, which is the subject-matter of the suit, was his own exclusive property in which R. R. Zingade had no share or interest. What the plaintiff in each suit claims is that the order of attachment passed by the Arbitrator may be declared to be illegal and *ultra vires*. No suit can lie for setting aside the order of the Arbitrator, or for getting it declared invalid, as the Co-operative Societies Act provides a remedy and a forum for obtaining such relief, under the Act itself.

For these reasons, *inter alia*, it should be urged that the two suits filed by the two plaintiffs are illconceived, and the same should be dismissed with costs as far as defendants No. 1 was concerned.

No. 172 of 1952.
6-2-1952.

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To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Bijapur C.S.No.199 of 1950.

(1) L.R.Zingade .... Plff.

Vs.

(1) Registrar Co-operative Societies & another Defts

Sir,

In respect of issue No.1 the Court ordered that for the Court's jurisdiction the claim in this suit may be valued at either the amount for which the houses were attached or the market value thereof whichever is less. Within 15 days the plff to amend the suit claim as indicated above and pay the deficit court-fees.

(2) The plff thus amended the plaint by adding at the end of para 1 of the plaint as follows:-

"The value of the property in para 1A and 1B above is Rs 1000/- and Rs 5000/- respectively".

He substituted the following in para 9 of the plaint:-

"This suit being one for a declaration to set aside the attachment of the properties it is not possible to assess the value for the purposes of Court-fees. A fix Court-fee of Rs 18-12-0 with 25 percent surcharge is paid under Art. 17(vii) of the Schedule to the Court fees Act making a nominal value of Rs 200/- thereof. The value for the purpose of injunction is paid at Rs 5/- and a Court-fee of Rs 8/- is also paid. The value for the purpose of jurisdiction and pleader's fees is Rs 6005/- being the market value of the suit properties"

Thus he valued the suit for Court-fees at Rs 205/- and at Rs 6005/- for the purpose of jurisdiction and pleader's fee.

He has paid the deficit court-fee.

(3) The suit is now fixed on 27-3-1952 for hearing and for putting in W.S. to the amended plaint.

(4) The plff has amended the plaint as per order of the Court and has paid the deficit court-fee.

By the amendment he has valued the suit property at Rs 6000/-. There is nothing in the records with me to show what the value of the peoperties is. The Secretary of defendant No.2 is of the view that its valuation is more. He is sending his subordinate to Bagalkot to ascertain the valuation.

So far as defendant No.1 is concerned, the question of valuation affects only pleader's fee. It does not affect jurisdiction of the Court. Thus considered , I am of opinion that no additional written statement may be put in. If the valuation is really more, deft No.2 may after ascertaining the valuation put in Additional written-statement and in that case the Court will determine the same.

Sanction may therefore be accorded not to put in any additional W.S. in this suit by deft No1

Yours faithfully,

Ahmad

District Govt.Pleader,
Bijapur.

L D.
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No. 171 of 1952.
6-3-1952.

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115

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Bijapur Civil Suit No.198 of 1950.

(1) L.R.Zingade .... Plff.
Vs.
(1) The Registrar Co-operative Societies and another. Defts.

Sir,

The Court passed an order as follows in respect of issue No.1:-

"For the purpose of Court's jurisdiction the entire claim in this suit may be valued at eitherof the amount for which the land and moveables were attached or the amount of the market value of the land and moveables whichever is less.Further the Court ordered that within 15 days, the plff to amend the valuation of the suit claim as indicated above and pay the deficit court fees".

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(2) According to the order of the Court ~~of~~ the plaintiff amended the plaint and paid court fee.

(3) By the amendment he has valued the land at Rs 4000/-. and the moveables at Rs 1350/- in para 1 of the plaint. He has substituted the following in para 9 of the plaint. "The suit being one for setting aside the attachment of the properties mentioned in para 1 of the plaint and injunction, the Court-fees for the land R.S.No. 33A/2 described in para 1(a) of the plaint is paid on Rs 19-11-0 being 7½ times the assessment under Sec.7(viii) of the Court Fees Act. Since the amount 7½ times the assessment of the land is less than the amount for which the land is attached. As regards the moveables properties mentioned in para 1(b) to 1(d) fixed Court-fee of Rs 15/- together with surcharge of Rs 25 per cent viz. Rs 18-12-0 is paid under Article No. 17 (viii) of the Schedule II of the Court Fees Act making the valuation at Rs 200/-. In all a Court-fee of Rs 21-2-0 has been paid including a relief for injunction valued at Rs 5/-. The valuation for the purpose of jurisdiction and pleader's fees is Rs 5350/- being the market value of the suit properties".

Spare Copy

In para 2 of the plaint he has amended by adding at the end of that para the following :-

"The properties mentioned in para 1 of the plaint have been attached for the recovery of an alleged amount of Rs 32000/- ".

He has thus valued the claim at Rs 219-11-0 on the Court-fee and Rs 5350/- for pleader's fees and jurisdiction.

~~(4) Nexhasxthusxvaluedxthexclaimxatxrsx219-11-0xon thexCourt-feexandxRsx5350/-xforxpleaderxxfeesxandxjurisdictionx~~

(4) The suit is now fixed on 27-3-1952 for hearing and for W.S. to the amended plaint.

(5) The plff has amended the plaint as per order of the Court and paid the deficit Court-fee.

The land was purchased in 1948 for Rs 4000/-. The value of the moveables amounts to about Rs 2700/-. Hence the valuation for purposes of jurisdiction and pleader's fee would be Rs 6700 and not Rs 5350/-.

I may therefore be permitted to put in an additional written-statement as per copy herewith attached.

Yours faithfully,

Ahmad

District Govt.Pleader,
Bijapur.

L/D

Please see above letter from the D.G.P. Bijapur. The Addl WS may be allowed & he may be asked to file it.

Dr 27/3

A Sob Please see the two letters of the D.G.P. in the suit. The Briefs of the suits were prepared by Sol. (Aug.) ~~Approved~~. The D.G.P.'s proposals about filing W.S. to the Amended Plaints may be approved

Sol. (Aug.) 27/3 27-3-52

27.3.

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In the Court of the Civil Judge, Sr.Dn.Bijapur.

Bijapur Civil Suit No. 198 of 1950.

1. L.R.Zingade ... Plff.

Vs.

1. The Registrar of Co-operative Societies.
2. The Wilson Antigamine Institute .... Defts.

Herein ~~wit~~ written statement to the amended plaint is as follows:-

(1) The value of the moveables in suit is about Rs 2700/- and not merely Rs 1350/-. The valuation for purposes of jurisdiction and pleader's fee is Rs 6700/- and not merely Rs 5350/- as stated in para 9 of the amended plaint.

District Government pleader,
Bijapur.

I, A.C.Angadi, District Government Pleader, Bijapur, hereby declare that what is stated in para 1 above is true on information received and believed to be true.

District Government Pleader,
Bijapur.

149-149

No. 4967

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 1st April 1952.

Subject :- Civil Suit No. 198 of 1950

Memorandum:

With reference to his letter No. 174 dated the 6th March 1952 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, Bijapur is informed that two copies of the ~~revised~~ draft are forwarded herewith.
approved
No W.S. to be filed in C.S. No. 199 of 1950.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

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No.241 of 1952.
31-3-1952.

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To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Bijapur Civil Suit No. 199/50.

1. V.R.Zingade ... Plff.
vs.
1. Registrar Co-operative Societies &another Defts.

Sir,

In continuation of No. 172 of 6-3-1952 I have the honour to state that on 27-3-1952 I applied for time to put in W.S. to the amended plaint and the suit now stands adjourned to 12-6-1952 for putting in W.S. to the amended plaint. I therefore request you ~~in xxxxxxxx~~ to accord ~~the~~ sanction not to put in any Additional W.S. by deft No.1 ~~xx~~ for reasons stated in my letter No. 172 of 6-3-1952.

Yours faithfully,

Ahmad

Dist.Govt.Pleader, Bijapur.

GOVT. ... DEPARTMENT
... No. 6724
Sub No. 5/4/52
Branch E

123
153

No. 240 of 1952.
31-3-1952.

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Bijapur Civil Suit No. 198/1950.

(1) V.R.Zingade ... Plff.
Vs.
(1) The Registrar Co-operative Societies ..Defts.
and another.

Sir,

In continuation of No. 171 of 6-3-1952 I have the honour to state that on 27-3-1952 I applied for time to put in W.S. to the amended plaint and the suit now stands adjourned to 12-6-1952 for putting in W.S. to the amended plaint. I therefore request you to send the written-statement after approving the same to enable me to put in the same in Court on the next date.

Sent to you vide my no 171 of 6.3.1952

Yours faithfully,
Ahmad
Dist.Gove.Pleader,Bijapur.

I TO GOVT.
LEGAL DEPARTMENT
File No. 6723
Sub No. 5/4/52
Branch E

154 Sent for information.
Action is already taken
on these.
File in S. Bijapur 4/57

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No. 918 of 1953.
Date: 6-7-1953.

From

A.C.Angadi, B.A.LL.B.,
District Government Pleader,
BIJAPUR.

To

The Remembrancer of Legal Affairs,
Secretariat, BOMBAY.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
16695
6-10-53

Subject:-Bijapur C.S.No.198 of 1950.
1.L.R.Zingade, of Bijapur.
Vs.
1. The Registrar of Co-operative Societies Poona.
2. The Wilson Anti-famine Institute, Bijapur.

Sir,

L.D.
9 JUL 1953

The above suit was heard and judgment was delivered today. The final order in the judgment is as follows:-"It is hereby declared that the plaintiff is the owner of the 1/3rd share in the suit properties and that the said 1/3rd share is not liable for attachment for the dues of R.R.Zingade. The Deft No.2 is restrained from proceeding against the said 1/3rd share of the Plaintiff in the suit properties. The plff do pay the costs of the Deft. The plff and deft No.2 do bear

P.T.O.

their own sosts.The suit against defendant No.1 is dismissed!!

Yours faithfully

Dist.Govt.Pleader,Bijapur.

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No. 15057/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 15-7- 1953.

Subject:- C.S. No. 198/50

MEMORANDUM.

With reference to his ~~endorsement~~ letter No. 918, dated the 6th July 1953, the District Government Pleader, Bijapur is requested to forward a copy of the judgment to this office immediately and to state what is the last date for filing an appeal.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur.

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No. 958 of 1953. 1-29/159

Date: 17th July 1953.

To

The Remembrancer of Legal Affairs,
Secretariat, BOMBAY.

L D.
20 JUL 1953

Subject: Bijapur Civil Suit No.198 of 1950.

Sir,

As reported by me under my No.198 of 6-7-1953, I have the honour to state that the Registrar of Co.Operative Societies is defendant No.1 in the suit and that the suit stands dismissed against him.

2. As required by you I have sent herewith an uncertified copy of the Judgment in the said suit.

3. As the suit was dismissed against defendant No.1 question of prefering an appeal by defendant No.1 does not arise.

4. The last date for prefering an appeal by plaintiff is, in view of section 24 of the Bombay Civil Courts Act, 1869 as amended by Bombay Act 54 of 1949 and in view of section 26 of the former Act, 30 days, from the date of the Judgment and decree exclusive of the time requisite for obtaining copy of the decree.

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21/7/53

Yours faithfully,

Ahmadabad

(Bijapur) District Government Pleader.

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Submitted

A copy of judgment in CS No 478/50 decided on 6.7.53 is put up below.

As the suit is dismissed against defendant No I, no further action appears to be necessary.

~~For orders~~

Yes
27/7
Sd (M) 27/7

137/164

Received on: 10-3-1950.
Registered on 17-3-1950.
Decided on 6-7-1953.
Duration: 19-3-~~12~~ 3.

In the Court of the Civil Judge Sr.Dn.,

At Bijapur.

Reg. Civil Suit No. 198 of 1950.

Exh. 70.

Shri K.R.Deshpande. Laxman Ravajirao Zingade

Pleader of Bijapur.

Against.

Shri Angadi A.C.
Shri S.T.Patil.

1. The Registrar, Co-operative Society Poona.
2. The Willson Antifamine Institute by its registered Office at Bijapur.

Claim Rs.

The plaintiff sues to obtain a declaration that the attachment, made in respect of the properties in para 1 of the plaint is illegal and ultra-vires and that it is not binding on him. He also sues for an injunction against the defendants restraining them to deal with those properties themselves or through the Arbitrator in A.B.N/255 of 1949. He prays for his costs.

The plaintiff alleges that he is the owner of the suit properties, mentioned in plaint paras 1A to 1D and that they were attached by the Revenue authorities, under the orders of the District Co.Officer, Bijapur, the subordinate of the defendant 1, in Ar.Case No. A.B.N.255/1949, at the instance of defendant 2. He says that the said order is illegal and contrary to law as those properties belong to him and as he is not a party to the said proceeding. A notice under Section 70 of C.S.Act and Section 80 of the C.P.C.was served on defendant 1 and the present suit was filed for declaration and injunction. He also stated that the orders of the Arbitrator are void abinitio, illegal and ultra-vires as the plaintiff was not the member of the defendant 2 (Society) and not a party to case No. 255/1949.

The defendant 1 in his written-statements,

Exhs.33 and 43 contended that the valuation of the suit for the purpose of jurisdiction and pleader's fee was not properly made and that the proper Court fee stamps had not been paid. He further contended that this Court had no jurisdiction to entertain the suit and that the proper remedy for the plaintiff was to approach the Arbitrator and prefer an appeal against the adverse order to the Co.Op.Tribunal. He also contended that he was not a necessary party to the suit as he was not responsible for the orders, passed by the Arbitrator, who is neitner an agent nor a sub-ordinate, of the - defendant 1, while holding the arbitration proceedings. He stated that the plaintiff was only a binamidar of his brother, R.R.Zingade and in the alternative, he has stated that R.R.Zingade had a share in the suit properties as the plaintiff and his two brothers are the members of the joint family. He contended that the plaintiff had no cause of action to file the present suit as only the right,title and interest of R.R.Zingade had been attacned and that the Arbitrator's was not at all illegal and contrary to law. He contended that the suit was not maintainable as the notices under section 70 of the C.P.Act and ~~xxx~~ section 80 of the C.P.C. were not properly and legally served on the defendant No.1 He prayed for his costs.

The defendant No.2 in its written-statements at Exs.28 and 41 supported the defendant No.1 in respect of legal and technical objections. It also stated that R.R.Zingade was the owner of the suit properties and that the order, passed by the District Co.Officer as an arbitrator was legal and intravires. It ~~Kxxxxxff~~ stated that the suit properties had been purchased by R.R.Zingade out of the misappropriated sum, belonging to the defendant 2. It contended that as the plaintiff had admitted his liability of the sum due by his brother, R.R.Zingade, the attachment order was binding on the plaintiff. It also contended that the suit was barred by time and

also under the provisions of the C.S.Act. It prayed for its costs.

The following issues were framed by Shri M.M. Nadkarni at Exh. 36.

I S S U E S.

(1) Whether the valuation made of the suit claim for the purposes of Court fee and the court's jurisdiction is proper ? Whether the Court fee paid for the suit is sufficient ?

(2) Whether the plaintiff is the owner of or has any interest in the moveable and the immoveable properties in suit ?

(3) Whether the defendants prove that the plaintiff is only a binamidar for his brother, R.R.Zingade, who is the real owner of the suit properties ?.

(4) Whether the order of attachment made by the Arbitrator affects plaintiff's interest in the suit properties, if any ?

(5) Whether the suit in its present form for a declaration and injunction is not tenable ?

(6) Whether this court's jurisdiction to try this suit is barred by section 57 or any other provision of the Bom.Co.Societies Act ?.

(7) Whether the notices, served by the plaintiff on the defendant 1 under section 70 of the Bom.Co.Societies Act and section 80 of the C.P.C. are legal and valid?

(8) Whether the Arbitrator who made the order of attachment is a servant, agent or subordinate of the defendant1?

(9) Has the plaintiff any cause of action against the defendant 1.

(10) Whether the order made by the Arbitrator for attachment of the suit propertie, is ultra-vires , illegal and void as regards the plaintiff ?

(11) Whetner the defendant 2 proves that the plaintiff admitted his liability for its claim against R.R. Zingade ?

(12) If so, is this suit not tenable ?.

(13) Is tne suit in time ?

(14) What decree ?

My findings: -

On issue No. 1. Yes. 2nd part: Does not survive after paying the court fee stamp of Rs.18/12/-.

" 2. He is the owner of the 1/3rd share in the suit properties, mentioned in 1A to 1D.

3. No.

4. Does not effect to the interest of 1/3rd share.

5. It is tenable.

6. No; not pressed.

7. Yes.

8. No;

9. No.

10. No. But, the said order is not binding on plaintiff's 1/3rd share in the suit properties.

11. It was done conditionally but it is not binding.

12. Does not ~~arise~~ survive.

13. Does not arise (Yes).

14. As per final order.

R E A S O N S.

The first issue was heard as a preliminary issue by my predecessor and the finding on it was recorded below Exh.1. The plaintiff got the plaint amended and he paid the court fee stamps of Rs.18-12-0 as per court's order. This issue was not pressed by the learned pleaders for the parties before me at the time of argument. I thus formally record my finding on the 1st part of it in the --- affirmative and on the 2nd part of it as not surviving.

Issues Nos. 4 & 5 and 7-10: These are all minor issues and I shall, therefore, dispose of them first. The defendant 2 is the Registered Co-Operative society and the certificate Ex.65 is clear on the point. The defendant 2 had employed plaintiff's elder brother, R.R.Zingade and the latter had

135 765

had misappropriated a large sum of money (i.e. about 37000) belonging to the former. The defendant 2, therefore wanted to recover the said amount from Zingade and it accordingly requested the defendant 1 to appoint a nominee Administrator to hold an inquiry and pass a decree against R.R.Zingade The defendant 1 under law, was bound to make the appointment of his nominee or the Arbitrator to decide the said dispute and he accordingly appointed the District Co.Officer as the nominee or arbitrator. The District Co.Operative Officer, then became the court for deciding the said dispute and the defendant 1 had no power or right to interfere with any order of the nominee or arbitrator, though the District Co.Operative Officer was, before such an appointment, a sub-ordinate officer of the defendant 1. It can also be seen from section 56 of the C.S.Act that the appeal against the orders of the nominee lay to the Co.Tribunal and not to defendant 1. The plaintiff could not have sued the arbitrator or District Co.operative officer even if the latter had passed the wrong orders. It can, therefore, be said that there is no cause of action against the defendant 1 and that the present suit has been filed against the defendant 1 unnecessarily.

It is true that the arbitrator passed the order of interim attachment in the arbitration case No.ABN 255/49 under the provisions of section 55 of the C.S.Act but he did so in the capacity of a Court. It was a legal order though the plaintiff may consider it as a wrong one. I am not at a loss to know how the plaintiff, being a practising pleader considered such a legal order as illegal and ultra-vires. The proper remedy for the plaintiff was to approach the Arbitrator and prove in his court that the properties, attached by him, really belonged to the plaintiff or at best to prefer an appeal against the order to the Co.Tribunal. The learned pleader for the plaintiff could not point out any law or authority to prove that the said attachment order was illegal or ultravires or

or contrary to law. Thus, without discussing the point in detail, record my findings on issues Nos. 8-10 against the plaintiff but in favour of the defendants.

The plaintiff had served the notice to the defendant 1 under section 70 of the C.S.Act before filing the suit and the former treated the said notice as one done under section 80 of the C.P.C.also. The learned Government pleader argued that the said notice could not be treated as a valid one as it had not been served on defendant 1 in a proper form. But it can be seen from the notice that the defendant 1 had knowledge of plaintiff's intention to file the suit of the present notice, in time. It would have been better, if the notice had been served in a proper and regular form. But this objection of the notice was fulfilled when the plaintiff sent the said notice to the defendant 1. I, therefore, deem that the said notice was served on the defendant 1 both under section 70 of the C.S.Act and section 80 of C.P.C. and that the present suit is not barred by any of those sections of those acts. I accordingly record my finding on issue 7 in the affirmative. This question is not substantive when the issues Nos. 8-10 are decided against plaintiff.

The plaintiff came to the Court for a declaration that the order of attachment, passed by the Arbitrator was illegal etc. and that the suit properties were not liable for attachment as they did not belong to R.R.Zingade. But it is curious to note that the plaintiff did not care to produce the copy of the said order though he knew that the said order was not on record in this suit. The defendants also did not produce the original order on the ground that neither of them was the custodian of arbitrator's papers in Arb.Case No. 255/49. The plaintiff stated that the arbitrator had attached the entire suit properties as belonging to R.R.Zingade while the learned pleaders for the defendants argued that the arbitrator had

attached only the right, title and interest of R.R.Zingade in the suit properties. If tne argument of the learned pleaders for the defendants were true, there was no necessity for the plaintiff to come to the Court to get the attachment raised. But it can be gathered from the evidence, led before me that the defendats assert that the ~~entire~~ entire suit properties belonging to R.R.Zingade, while the plaintiff calls himself as the absolute owner of all the them (suit properties). The defendants went to the length of saying that the plaintiff~~x~~ was only the binamidar of R.R.Zingade and that the suit properties were purchased by R.R.Zingade by utilying the misappropriated amount, belonging to the defendant 2.In the circumstances even in the absence of the order of attachment before me, it would be proper and reasonable to declare in this suit what interest the plaintiff has got in the suit properties. As there are no provisions in the C.S.Act semilar to those of the C.P.C. as mentioned in ar.21 (rr.58-63, to raise the attachment, made under section 55 of the C.S.Act, the proper cause for the defendant was either to approach the Co.Tribunal under section 56 of the Co-Operative Societies Act (Amended) or the Civil Court under the provisions of the specific Relief Act. I, therefore treat that the present suit for declaration is maintainable. The issue No.4 is not specific but it is framed only to know the general principles of law on such points. The arbitrator was not competent to attach the properties of a person who was not a party to the proceeding. If the plaintiff treats the suit properties as his own and if those properties are attached by the arbitrator, the former can come to the Court and get a declaration that they or any of them belong to him. Moreover, it is just and reasonable to declare the right of tne plaintiff in the suit properties in this suit, instead of during the parties, (i.e. the plaintiff and defendant 2) to a further litigation on the same point.

I accordingly record my findings on issue Nos. 4 and 5 in the light of my above mentioned observations.

Issues Nos.2,3,6,11-13. The learned pleaders for the defendants could not point out law the present suit would be barred under section 57 of the C.S.Act. I, therefore, without discussing further about issues No.6 record my finding on it as not pressed and in the negative. The learned pleader for the defendant 2 argued that the plaintiff had admitted his liability to pay the amount, misappropriated by his brother, R.R.Zingade, in the application made to the Collector and that the plaintiff was not, therefore, competent to ~~any~~ deny his liability to pay the said sum to the defendant 2 now. It is true that the plaintiff had made the application to the Collector agreeing to pay the misappropriated amount, on condition that his brother was not criminally prosecuted. This was only an appeal, made by the plaintiff. But the Collector did not accept that appeal and R.R.Zingade was prosecuted criminally and also convicted. The plaintiff wanted to pay the amount, misappropriated by R.R.Zingade, just to save the honour of his family. In the circumstances, I am not prepared to treat the said application of plaintiff as the binding admission of liabiltity of the plaintiff. I thus, record my finding on issue No.11 in the negative. The issues Nos. 12 and 13 do not survive and I may formally record my findings on them in favour of the plaintiff.

The important issues in the present suit are the issues Nos. 2 and 3. As stated already above, the plaintiff calss himself the owner of the entire suit properties and states that his two elder brothers V.R.Zingade and R.R.Zingade had no interest in them. He further alleges that there was a partition among his brothers and himself in the year 1947 and that he got to his share then, a cash of Rs.3000/- and the moveables worth Rs.7000/-. He suggested that R.R.Zingade got only

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the cash of Rs.10,000/- to his share and V.R.Zingade took two ancestral houses at Bagalkot, for his sharein the alleged partition of 1947. But V.R.Zingade, admitted in suit No.199/1950 that he had only 1/3rd share in those houses. The defendant 2 could not prove, by leading evidence, that any of the suit properties was purchased by R.R.Zingade binami in the name of the plaintiff , by -- utilying the misappropriated money or any money belonging to R.R.Zingade. Its learned pleader, however argued with reference to the circumstances and the probabilities of the case that it was not possible for the plaintiff to save Rs.4000/- and purchase the suit land 1A in ~~the~~ 1948. The plaintiff introduced a story of a dawry without giving any proof ~~the~~ about it. There is no scrap of paper to show that he received any money as dawry from his father in law, and so much amount of it was deposited by the plaintiff in any bank or society or ship. ~~He~~ He started practise as a pleader in the begining of the year 1948 and the suit property, 1A was purchased for Rs.4000/- only a few months later. I am not therefore, prepared to believe the stories told by the plaintiff, in view of the circumstances of the case and in the absence of evidence, in corroboration of plaintiff's statement.

However, though both the plaintiff and defendant 2 are unable to prove that the amount of consideration of the sale and of the property 1A belonged to the plaintiff or to R.R.Zingade, it is on record that the family of the plaintiff and his brother was joint at least up to 1947 as per admission of the plaintiff himself and that the joint family had in 1947, a cash of Rs.3000/-, gold worth Rs.10,000/- the movables, worth Rs.7000/- and two ~~the~~ houses at Bagalkot worth Rs.10000/-. The plaintiff and his two brothers were managing the expenses of their families out of the separate earnings and they were not saving anything out of their earnings, up to 1948. If is ~~the~~were so, in the absence of the proof of partition among the plaintiff and his brothers

it can be said emphatically that the suit properties 1B,1C and 1D were either purchased by utilying the joint family funds or they were existing in the joint family. It can further be said that the su t property, 1A was purchased for the family, in the name of the plaintiff, the educated member of the joint family, who alone was not in service at the time of the purchase of it. When there was sufficient members in the joint family to purchase the suit properties, it was the duty of the plaintiff to show that he he invested his own selfearned or separate money in purchasing any of them. The plaintiff failed to prove both the partition and the selfacquision of any of the suit properties.

The plaintiff, as one of the 3 brothers of the joint family, has got his 1/3rd share in those suit properties and he is, therefore, entitled to obtain a declaration to that extent. For these reasons, I record my findings on all the issues accordingly and pass the following order. In the circumstances, I order that the plaintiff and defndant 2 should bear their own costs. The plaintiff will have to pay the costs of the defendant 1, in any case.

O R D E R.

It is hereby declared that the plaintiff is the owner of the 1/3rd share in the suit properties and that the said 1/3rd share is not liable for attachment for the dues of R.R. Zingade. The defendant 2 is restrained from proceeding against the said 1/3rd share of the plaintiff in the suit properties. The plaintiff do pay the costs of the defendant 1. The plaintiff and the defendant 2 do bear their own costs. The suit against defendant No.1 is dismissed.

6-7-53. Sd. M.H. Kazi.

No. 564 of 1953.
Date:- 14-4-53

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To

The Collector of Bijapur.

Subject:- Bijapur S.C.No.199 of 1950.
1. V.R.Zingade. plff.
Vs.
1. The Registrar of
Co-operative Societies,
B.S. Poona and another. defts.

Sir,

I have the above suit was heard and decided and I am sent herewith an uncertified copy of the judgment.

2. The finding of the Civil Court is that the plaintiff has no cause of action against the deft No. 1 whose is the Registrar of Co-operative Societies Poona on whose behalf I appeared on defence being sanctioned by Government. Further the Court has awarded the costs of the deft No.1.

3. The real dispute was between deft No.2 and plff. Deft No.2 filed a pursis that the defaulter R.R.Zingade had only 1/3rd share. The plff also admitted that he had got only 1/3rd share in the suit properties. The court accordingly declared that the plff is the owner of the 1/3rd share. Under these circumstances deft No.1 cannot be said to be aggrieved by the decision of the Court. In fact deft No.1 has been awarded his costs. I am therefore of opinion that no appeal need be preferred by deft No.1 against the Decision and Decree in this suit. I therefore request you to report to the Remembrancer of Legal Affairs your own view as to whether an appeal should or should not be preferred. The period of limitation for filing an appeal is only 30 days.

Yours faithfully

Sd.A.C.Angadi.

Dist.Govt.Pleader,Bijapur.

No. 565 of 1953.
Date:- 13-4-1953.

Copy respectfully forwarded to the Registrar Copoperative Societies, B.S.Poona with copy of Judgment with a request to communicate to the R.L.A. as to whether an appeal should be preferred. I am of opinion that no appeal need be preferred by or on

Remembrancer of Legal Affairs

P.T.O.

GOVERNMENT
LEGAL DEPARTMENT
9502
17/4/53

behalf of Registrar against the Decree in the above suit.

Sd.A.C.Angadi.

District Govt.Pleader,Bijapur.

No. 566 of 1953.
Date:- 13-4-1953.

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Bombay, with a copy of the Judgment.

As stated by me in my letter of Bijapur I am of opinion that no appeal the Collector preferred by defendant No.1 against the Decree in the above suit.

Ahurad

District Govt.Pleader,Bijapur

LEGAL DEPARTMENT
16 APR 1953

L.D

Submitted

M. see D.G.P's letter overleaf.

He has forwarded a copy of Jud. in C.S. No. 199/50. He is not in favour of filing an appeal for costs.

Dhw
19/4

Sol (H).

There is no decree against Govt/Govt. only the claim has been given. Costs. This can be merged in grounds of appeal by Deft No 1.

A.
19/4

1431/79

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION? AT BIJAPUR.

Pleaders.

Shri K.R.Deshpande.

Civil Suit No 199 of 1950.

1. V.R.Zingade, age 38, profession Govt. Servince resident of Bagalkot now at Karwar. Plainitf.

Vs.

A.C.Angadi, D.G.P.

S.T.Patil,

1. The Registrar of Co-operative Societies Poona.

2. The Wilson Anti Faminxe Institute having its registered Head Office at Bijapur.

Claim Rs.6005-0-0.--- for pleader's fee and jurisdiction.

The plaintiff sues to obtain a declaration that the attachment effected on the property mention-ed in plaint paras 1 was illegal and ultravires and obtain an injunction against the defendantsx restraining them from dealing with the property or from taking further steps against it. He sues to recover his costs.

The plff alleges that he is the owner of the suit properties and that the Revenue Authorities ~~and that~~ attached those properties under the orders of the Co-operative Societies Officersx, behind the back of the plff in Arb.Case No.A.D.N/255 of 1949 He says that the said order and the attachment are illegal and ultravires as he is not the member of the Co-operative Societyxxx and as the suit properties belong to him. The suit was therefore filed for a declaration and injunction by serving notices to both the defts as required under law, when the defts refused to cancel the order of attachment, which had been passed on 12-3-1949.

No.1

The defts filed the W.S., at Exh.35 and contended inter alia that the suit against the deft No.1 was not maintainable and that the

Court had no jurisdiction to question the order, passed by the Arbitrator~~x~~. He stated that the Arbitrator was not the agent of the Government. He stated that plff's brother, the defaulter was the sole owner of the suit property and that the plff was only a benamidar of the defaulter and also that only the share and interest of the defaulter, R.R.Zingade had been attached by the arbitrator and that the order of attachment was legal and valid.He also stated that the notices under section 70 Co-operative Societies Act and section 80 of Civil Procedure Code were not proper and legal. He challenged plff's right to file the suit for declaration and for injunction. He contended that the valuation of the property was not properly made. He prayed for his costs.

The deft No.2 in its W.S. Exh.30 denied plff's title to the suit property.It stated that the proper court fee stamps had not been paid and that this court had no jurisdiction to entertain the suit. It contended that the suit was time barred.It prayed for its costs.

The following issues were framed by Shri M.M. Nadkarni at Exh.37.

Issues.

1. Whether the valuation made of the suit claim for the purposes of court fees and court's jurisdiction is proper ?-

2~~x~~ Whether the court fee paid for the suit is sufficient?

2. Whether the plff is the owner of or has any ~~right~~ interest in the moveable and immoveable properties in suit ?

3. Whether the defts prove that the plff is only benamidar for his brother R.R.Zingade, who is the real owner of the suit properties ?

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4. Whether the order of attachment made by the Arbitrator affects the plff's interest in the suit properties, if any ?

5. Whether the suit is in the present form for declaration and injunction is not tenable ?

6. Whether this Court's Jurisdiction to try this suit is barred by section 57 or any other provision of the Bombay Co-operative Societies Act ?

7. Whether the notices served by the plff on the deft No.1 under section 70 of the B.C.S.Act and section 80 of C.P.C are legal and valid ?

8. Whether the Arbitrator who made the order of attachment is a servant, agent or the subordinate of the deft No.1 ?

9. Has the plff any cause of action against the deft No. 1 ?

10. Whether the order made by the Arbitrator for attachment of the suit properties is ultra vires, illegal and void as regards the plff?

11. Whether the deft No.2 proves that the plff admitted his liability for its claim against R.R.Zingade ?

12. If so, is this suit not tenable ?

13. Is the suit in time ?

14. What decree ?

On issue No.1. Yes; Yes. (Not pressed by defts).

" 2. Yes, 1/3rd.

" 3. No.

" 4. No, in respect of plff's 1/3rd share.

" 5. It is tenable.

" 6. No; (Not pressed).

" 7. Yes.

" 8. No, but a court to decide the dispute arising between the deft No.2 and plff's brother.

On issue No.	9.	No.
"	10.	Yes, in respect of Plff's 1/3rd share.
"	11.	No.
"	12.	Does not survive; suit is tenable.
"	13.	Yes.
"	14.	As per final order.

Reasons.

On the date of hearing, the deft No.2 filed a pursis (Exh.49) stating that the defaulter, R.R.Zingade (elder brother of the plaintiff) had only 1/3rd share in the suit properties and that the attachment of only 1/3rd share had been made by the Arbitrator. The plaintiff also admitted that he had got only 1/3rd share in the suit properties. But at the time of filing the pleadings, both the plaintiff and defendant No.2 alleged that the entire suit property belonged to the plaintiff or his brother (R.R.Zingade). Neither of these parties plainly admitted that R.R.Zingade had only 1/3rd share in the suit properties, in the beginning. If it had been sone so, there was no necessity of the suit at all and the Court would have awarded the costs of the suit to a party who plainly admitted the said fact in the pleadings. But in any case, the defendant No.1 is not a party to the suit as it merely appointed the arbitrator to decide the dispute between the defendant No.2 and the defaulter, as a tribunal. Defendant No.1 has no interest in the suit properties and arbitrators' decision will affect either to defendant No.2 or the plaintiff or his brother. The arbitrator's possession is only that of a Court, constituted under the provisions of the Bombay Co-operative Society's Act. Then the defendant No.1 is not a necessary party to the suit. And he is therefore entitled to get the costs. The arbitrator cannot also be regarded as an agent or a nominee of the defendant No.1 though the appointment of the arbitrator was made by defendant No.1. Neither of the

147/47

defendant No.2 nor the plaintiff produced the copy of the order of attachment, passed by the arbitrator. At the time of the filing of the written statement, defendant No.2 alleged that the defaulter was the full owner of the entire suit properties and that the order of attachment of the suit property was proper and legal. From this, one can make out that the arbitrator attached the entire suit properties before the award was made. The learned pleader for the defendant No.2 argued that only the right, title and interest of the defaulter had been attached. If it were so, the defendant No.2 ought to have produced the said order some time before the adjournment or at the time of the argument or at least ought to have stated so clearly in its written statement instead of alleging then, in the alternative, that the plaintiff was a mere benamidar of the defaulter. I , thus hold that both the plaintiff and defendant No.2 are at fault and that both of them are liable to their own costs and also pay the costs of the defendant No.1, half and half.

None of the parties pressed for the issues Nos.1,3, 5,6,7, and 11 at the time of argument; and I therefore record my findings on them. I also record my findings on the remaining issues accordingly in terms of the purshis (Exh.49). For these reasons, I pass the following order;--

ORDER.

It is hereby declared that the plaintiff is the owner of the 1/3rd share in the suit property and that the attachment,made by the arbitrator in case No.ABN/255 on 12-3-1949 is raised. The plaintiff and defendant No. 2 should each pay the costs of defendant No.1 half and half and should also bear their own costs.

Sd. M.H.Kazi.
Civil Judge, Sr.Dn.,
Bijapur.

13-4-1953.

Letter.

No. L.A.W.
Bijapur, 23-4-1953.

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4/57

To

The District Govt.Pleader,
BIJAPUR.

Subject:- Bijapur C.S.No.199 of 1950.
V.R.Zingade, -- plff.
Vs.
The Registrar of Co-operative Societies B.S.Poona and another.

LEGAL DEPARTMENT
28 APR 1953

Ref:- Your letter No.454 dated 14-4-1953.

In the above said suit the Registrar Co-operative Societies, B.S.Poona is a party to the proceedings. The Registrar Co-operative Societies may therefore be asked to submit the report to R.L.A. accordingly.

Sd.
For Collector, Bijapur.

No. 611 of 1953.
Date 24-4-1953.

Copy respectfully forwarded to the Registrar Co-operative Societies,B.S.Poona in continuation of my No.565 of 13/14-4-1953.

Sd.A.C.Angadi.

District Govt.Pleader,
Bijapur.

No. 612 of 1953.
Date 24-4-1953.

THE GOVERNMENT LEGAL DEPARTMENT
File No. 10453
Subject No. 29/4/53
Branch

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Bombay No.1 in continuation of my No.566 of 13/14-4-1953.

Ahurad

District Govt.Pleader,Bijapur.

Submitted for information.
Cs no 199/50 is already decided.
Nil
30/4 - No action necessary
Sd/ 1/5/53

157 131

Immediate. No. 12029/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 29th May 1953.

Subject:- C.S.No.199/50.
V.R.Lingade
vs.
The Registrar of Co-operative
Societies and another.

MEMORANDUM.

With reference to his endorsement No.566 dated the 14th April 1953 on the subject noted above, the District Government Pleader, Bijapur is informed that Government has decided not to file an appeal against the decision of the Civil Judge (J.D.), Bijapur dated the 13th April 1953.

VGP.29.5.

for Remembrancer of Legal Affairs.

P.T.O.

To
The District Government
Pleader, Bijapur.

Copy forwarded with compliments to:-

The Development Department,

The Registrar of Co-operative Societies,
Bombay State, Poona,

The Collector of Bijapur.

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No. 796 of 1953.
Date:- 8-6-1953.

To

The Remembrancer of Legal Affairs,
Bombay No.1

Subject:- Bijapur C.S.No.199/1950.

LEGAL DEPARTMENT
12 JUN 1953

Sir,

I have the honour to send herewith an uncertified copy of the Decree in the above suit.

Yours faithfully

Dist.Govt.Pleader,Bijapur.

1459
6-13-6-53

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Decree

In the Court of the Civil Judge, Sr. Dn.,

At Bijapur. Ex.61

Civil Suit No. 199 of 1950.

1. Venkatesh Raojirao Zingade age 38, profession Government service - reporter (C.I.D). Resident of Bagalkot now residing at Karawar H. No. 1673 , Kajubag , Karawar Dist. Karawar. ----- Plff.

Vs.

1. The Registrar of Cooperative Societies , Poona .----------

2. The Wilson Anti -famine Institute having its Registered Office at Bijapur.-------

(summons to be served on the Secretary the Wilson Anti -famine Institute Bijapur).

Claim Rs. 206-0-0

Suit filed on 10-3-1950

Suit Registered on 17-3-1950

The above named plaintiff begs to submit as under.

1. The plaintiff is the owner of the houses described below situated at Bagalkot Dist Bijapur.

S. No.	City S. No.	Area	Ward	Place
(a)1	440 sqr. yds	88	111	Bagalkot
(b)2	441 "	210	111	"

The value of the property in para (1) a and 1(b) above is Rs. 1000/- and 5000/- respectively.

2. Such being the case , the Revenue Authorities at Bagalkot attached the properties mentioned above, under the orders of the District Copperative Officer , Bijapur who i s the subordinate of the defendant No.1 . The orders passed behind the back of the plaintiff are said to have been made by him as an arbitrator in Arbitration Case No. A.B.No. /255 of 1949 at the instance of defendant No.2 which the plaintiff was not a party . The plaintiff has come to know of the said order from the endorsement on City S. extracts.

3. The orders referred to above in para 2 are void ab-initio as the plaintiff was not a party to the said proceedings The arbitration could only be between the members of the Society and the Society. As plaintiff is not a member of the defendant No.2 the orders passed by the Arbitrator are not binding on the plff.

4. The plaintiff asserts that this attachment made by the subordinate of the defendant No.1 is illegal and ultra vires as he has no authority to deal with the properties of the plff.

5. The alleged proceedings in which the said orders are said to be passed are illegal ,ultra vires and void . Hence, the order of attachment is illegal and void.

6. The plaintiffs served a registered notice on defendant No.1 on 29th July 1949 as per provisions of Section 70 of the Bombay Co-operative Societies Act 1925 and of section 80 of C. P. C. 1908 claiming that the said attachment was illegal and that a declaration to the effect that the properties were not liable for attachment and that the said subordinate of defendant No.1 restrained from dealing with the above mentioned properties.

7. The defendant No.1 has refused to do so on 22-8-1949 Hence, the plaintiff has brought this suit for a de claration that the attachment effected on 12-3-1949 of the properties mentioned in para 1 above is illegal and ultra vires and for an injunction restraining the defendants from dealing with the properties to the prejudice of the rights and interests of the plff.

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8. The cause of action for this suit arose on or about 5-6-1949 when the attachment came to the knowledge of the plaintiff and also when the attachment was made at Bagalkot within the Jurisdiction of this Court.

9. This suit being one for a declaration to set aside the attachment of the properties it is not possible to assess their value for the purpose of the Court fees , a fixed Court fee of Rs. 18-12-0 with 25% surcharge is paid under Article 17 (vii) of the Schedule to the Court fees Act -making a nominal value of Rs. 2000/- thereof. The value for the purpose of injunction is made at Rs. 25/- and Court fee of 0-8-0 is also paid . The value for the purpose of jurisdiction and pleader 's fees is Rs. 6005/- being the market value of the suit properties.

10. This Court has jurisdiction to try the suit as the parties reside within the Jurisdiction and the cause of action also arose within its jurisdiction .

11. The plaintiff prays :-

1. For a declaration that the attachment effected regarding the properties mentioned in para 1 of the plaint on or about 12-3-1949 is illegal and ultra vires and that the same is not binding on the plaintiff.

2. For an injunction against the defendants restraining them from dealing with the suit properties themselves or through arbitrator in Arbitration Case No. ABN/255 of 1949 by passing any further orders in respect thereof

3. For costs of the suit.

4. For permission to amend the plaint if and when necessary .

The suit coming on this day 13th day April 195 for final disposal before Shri,E.HRKazi Civil Judge

Dn. Bijapur in the presence of Shri, L. R. Zingade for plaintiff and Shri. A. C. angadi for defendant No.1 and Shri. S.T.Patil for deft No.2 it is ordered and decreed as follows :-

It is hereby declared that the plaintiff is the owner of the 1/3 rd share in the suit properties and that the attachment made in the Arbitration Case No. ABN /255 on 12-3-1949 is raised. The plaintiff and defendant No.2 should each pay the costs of the defendant No.1 half and half and should also bear their own costs.

BILL OF COSTS.

Plff.		Deft No.1	
1. For plaint	19-4-0	Vakalatnama	0-10-0
2. For vakalatnama	0-10-0	Exhs. 14,20,21, 23, 28,31,32, 33, 34, 43	6-4-0
3. For applications- Ex. 17, 40, 41 42,46, 47, 48 ----------	4-6-0	Pleader's fees..	210-0-0
4. Pleader's fees	210-0-0		Rs. 216-14-
5. Process fees	10-0-0		
	Rs. 244-4-0		
Costs disallowed Ex. 17.40,41, 42, 46, 47 and 48.....	4-6-0	Costs disallowed. Exs. 14,20,21,23, 28 31, 32, 34...	5-0-0
	Total Rs. 239 -14-0		Total Rs. 211-14-0

For deft No. 2.

1. For vakaltnama	0-10-0
2. Exs. 10,11, 12, 15, 22, 24, 27,29,38	(6-4-0)
3. Pleader,s fees.	210-0-0
	Rs. 216-14-0
Costs disallowed . Exs. 10,11,12,15, 22, 24, 27, 29, 38.	5-10-0
	Total Rs. 211-4-0

Given under my hand seal of the Court , his day of 13th April 1953.

Sd/- S.A.Mulla
Clerk

Sd/- M.H.Kazi
Civil Judge, Sr. Dn.
Bijapur.
22-4-1953.

Sd/- L.R.Kingade
Pleader for Plff.

Sd/- A.C.Angadi
Pleader for Deft No.1

16/ 194

Suits:
Bijapur.
For a declaration that an order of attachment of property passed by the Arbitrator, appointed by the Registrar of Co-operative Societies for deciding a certain dispute, was illegal, void and ultra vires, and for an injunction.

Government of Bombay,
Legal Department,
Resolution No. 15237/12
Bombay Castle, 17th July 1953.

Read Government Resolution, Legal Department, No. 14490, dated the 12th September 1951.

Endorsement from the District Government Pleader, Bijapur, No. 566, dated the 14th April 1953, stating that

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No. 199 of 1950. Venkatesh Raojirao Zingade .. Plaintiff; vs. The State of Bombay.. Defendant.	the suit noted in the margin was

decided by the Civil Judge (Senior Division), Bijapur on the 13th April 1953, when the following order was passed:-

" It is hereby declared that the plaintiff is the owner of the 1/3rd share in the suit property and that the attachment, made by the arbitrator in case No. ABN/255 on 12-3-1949, is raised. The Plaintiff and Defendant No. 2 should each pay the costs of defendant No. 1 half and half and should also bear their own costs."

Endorsement from the District Government Pleader, Bijapur, No. 566, dated the 14th April 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

R T Katarki

original R.T. KATARKI,
Deputy Secretary to Government.

Issued 17/7

To

The Development Department,
The Registrar of Co-operative Societies, Bombay State, Poona,
The District Government Pleader, Bijapur.

MMS.7.7.

Submitted for signature
the
16/7
Supdt NB 17/7/53 D.S. (Genl)

Filiw. .S. Bijapoor 4/51

3/2

S S

159/59

Given under my hand seal of the Court , his day of 13th April 1953.

Sd/- S.A.Mulla
Clerk

Sd/- M.H.Kazi
Civil Judge, Sr. Dn.
Bijapur.
22-4-1953.

Sd/- L.R.Zingade
Pleader for Piff.

Sd/- A.C.Angadi
Pleader for Deft No.1

163 145

Suits:
Bijapur.
For a declaration that an order of attachment of property passed by the Arbitrator, appointed by the Registrar of Co-operative Societies for deciding a certain dispute, was illegal, void and ultra vires, and for an injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2673-E
Bombay Castle, 6th February 1954.

Read Government Resolution, Legal Department No. 14490, dated the 12th September 1951.

Letter from the District Government Pleader, Bijapur No.918, dated the 6th July 1953, stating that the suit noted

In the Court of the Civil Judge (Senior Division), Bijapur.		in the
Civil Suit No. 198 of 1950.		margin was
Laxman Raojirao Zingade ..	Plaintiff;	
V/s		decided by the
The State of Bombay ..	Defendant.	

Civil Judge (Senior Division), Bijapur on the 6th July 1953, when the following order was passed:-

" It is hereby declared that the plaintiff is the owner of the 1/3rd share in the suit properties and that the said 1/3rd share is not liable for attachment for the dues of R.R.Zingade. The defendant 2 is - restrained from proceeding against the said 1/3rd share of the plaintiff in the suit properties./ The plaintiff and the defendant 2 do bear their own costs. The suit against defendant 1 is dismissed.

/The plaintiff do pay the cost of the defendant.

Letter from the District Government Pleader, Bijapur No. 958, dated the 17th July 195 , forwarding uncertified copies of the judgment and decree.

Resolution:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

(R.T. Katarki)
Deputy Secretary to Government.

To
The Development Department,
The Registrar of Cooperative Societies, Bombay State Bombay. Poona
The District Government Pleader, Bijapur.

194. 164

File in S. Bijapur 4/51.

S.S.

S. Bijapur 4/51
9/2/54